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No. A-83

In The

Supreme Court of the United States

October Term, 1971

CITY OF VIRGINIA BEACH, *Appellant,*

v.

HENRY E. HOWELL, JR., ET AL., *Appellees.*

and

CITY OF VIRGINIA BEACH, *Appellant,*

v.

STANFORD E. PARRIS, ET AL., *Appellees.*

and

CITY OF VIRGINIA BEACH, *Appellant,*

v.

CLIVE L. DuVAL, II, ET AL., *Appellees.*

On Direct Appeal from the United States District Court for the Eastern District of Virginia

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JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

This is the separate appeal of the City of Virginia Beach[1] from an opinion and interlocutory order entered July 2, 1971, by the United States District Court for the Eastern District

[1] As there are several appellants in this case, the City of Virginia Beach will be referred to by its proper name rather than as "appellant."

of Virginia holding that the reapportionment plan of the General Assembly of Virginia for the election of members of both the Senate and the House of Delegates violates the Equal Protection Clause of the Fourteenth Amendment and substituting for the Virginia plan the court's own reapportionment plan. The City of Virginia Beach submits this Jurisdictional Statement to demonstrate that the Supreme Court of the United States has jurisdiction of this appeal and that relief is appropriate for the City of Virginia Beach whether or not this Court grants relief to the other appellants in this case.

OPINION BELOW

The opinion of the District Court, not yet reported, appears in the Joint Appendix at 1 to 22, and the interlocutory order in the Joint Appendix at 23 to 25.[2]

JURISDICTION

The three suits involved in this appeal were instituted in the United States District Court for the Eastern District of Virginia to test the constitutionality of the Acts of the General Assembly of Virginia reapportioning the State, as a result of the 1970 census, into districts for the election of members of the Senate and House of Delegates. The District Court had jurisdiction pursuant to 28 U.S.C. §§ 1343 (3) and 2201, and 42 U.S.C. §§ 1983 and 1988. Three-judge courts were convened to hear each of the suits, as required by 28 U.S.C. §§ 2281 and 2284.

The cases were consolidated for trial, and on July 2, 1971, an opinion for the consolidated court was filed and an inter-

[2] The City of Virginia Beach and the Virginia State Board of Elections—Joan S. Mahan, *et al.*, have joined in preparing a Joint Appendix to their separate Jurisdictional Statements.

locutory order entered effectuating the opinion. The City of Virginia Beach sought a stay of this order and a new trial from Judge John A. McKenzie, which were denied on July 13. The order denying the rehearing is printed in the Joint Appendix at 26 to 27. The City of Virginia Beach filed a Notice of Appeal in all three suits in the United States District Court for the Eastern District of Virginia on July 15 which is printed in the Joint Appendix at 47 to 48.

Jurisdiction of this appeal is conferred on the United States Supreme Court by 28 U.S.C. §§ 1253 and 2101(b). *See Baker* v. *Carr*, 369 U.S. 186 (1962); *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Fortson* v. *Dorsey*, 379 U.S. 433 (1965); *Whitcomb* v. *Chavis*, 39 U.S.L.W. 4666 (U.S. June 7, 1971).

STATUTES INVOLVED

The Virginia reapportionment plan overturned by the District Court is contained in Chapter 116, Acts of Assembly of 1971, setting forth a reapportionment plan for the House of Delegates, and Chapter 120, as amended and re-enacted by Chapter 246, Acts of Assembly of 1971, setting forth a reapportionment plan for the Senate. The 1971 Acts have yet to be published, but these statutes are printed in the Joint Appendix at 27 to 43.

QUESTIONS PRESENTED

(1) Whether the slight deviation from mathematical equality in the General Assembly's reapportionment plan for the House of Delegates is justified to maintain the integrity of political subdivision boundaries in order to give the voters of those political subdivisions an effective voice in at least one body of Virginia's bicameral legislature.

(2) Whether the District Court's reapportionment plan, which submerges large numbers of citizens of Virginia Beach in vast multimember districts for the election of members of both houses of Virginia's bicameral legislature, unconstitutionally dilutes the votes of these citizens and denies to the City of Virginia Beach representation in proportion to its population.

(3) Whether the District Court abused its discretion by ordering a reapportionment plan for the House of Delegates without giving the General Assembly any opportunity to revise its plan and without considering factors important to the determination of fair representation for the City of Virginia Beach.

STATEMENT OF THE CASE

Pursuant to Article II, § 6 of the revised Constitution of Virginia, the General Assembly enacted Chapters 116 and 120, Acts of Assembly of 1971, on March 1, 1971, apportioning the State into electoral districts for the election of members of the House of Delegates and Senate, respectively. Three suits were thereafter instituted in the United States District Court for the Eastern District of Virginia attacking the constitutionality of these Acts. Two suits, *DuVal* v. *Prichard,* filed in the Richmond Division (Civil Action No. 174-71-R), and *Parris* v. *Prichard,* filed in the Alexandria Division (Civil Action No. 111-71-A), alleged that Northern Virginia was underrepresented in the House of Delegates. The third suit, *Howell* v. *Mahan,* filed in the Norfolk Division (Civil Action No. 105-71-N), alleged that 36,693 naval personnel stationed at the Norfolk Naval Station but largely residing elsewhere had improperly been placed in one senatorial district. The three suits were consolidated for trial and set for hearing on May 24, 1971, before four judges, sitting as three Three-Judge District Courts.

The City of Virginia Beach, a municipality with a 1970 population of 172,106 located adjacent to the City of Norfolk, intervened as a party defendant in all three suits pursuant to Rule 24(a) of the Federal Rules of Civil Procedure. Other intervenors included the City of Norfolk as a defendant and several black citizens of the City of Richmond (William S. Thornton, *et al.*) who intervened as plaintiffs on behalf of themselves and all those similarly situated black residents of Virginia.

On May 7, 1971, the United States Attorney General, acting pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973(b), objected, on the grounds of dilution of the black minority vote, to the multimember house districts in five urban areas and to the line demarcating the boundary between the 5th and 6th Senatorial Districts in Norfolk. (App. at 51 to 53).

The hearing on May 24 was devoted to arguing the effect of the Attorney General's objection. The court thereupon entered an "Order on First Hearing" (App. 43 to 46) providing: (1) that the trial of the three suits be continued to allow Virginia an opportunity to obtain approval of a reapportionment plan from the United States Attorney General or the United States District Court for the District of Columbia, as provided in the Voting Rights Act; (2) that the primary elections originally set for June 8, 1971, be postponed until September 14, 1971; and (3) that the court would proceed with trial of the three suits and thereafter itself formulate a reapportionment plan resolving valid objections, if any, of the plaintiffs, unless prior to June 15, 1971, Virginia had submitted a reapportionment plan to the United States Attorney General for his approval or had sought a declaratory judgment from the United States District Court for the District of Columbia.

Before the June 15 deadline, this Court handed down its opinion in *Whitcomb* v. *Chavis,* 39 U.S.L.W. 4666 (U.S. June 7, 1971). In the wake of *Chavis,* the Attorney General withdrew his objection to the reapportionment plan for the House of Delegates. (App. at 53). On June 14, 1971, the General Assembly adopted Chapter 246, Acts of Assembly of 1971, which amended Chapter 120 to revise the line between the 5th and 6th Senatorial Districts, thereby eliminating the Attorney General's sole objection to the reapportionment plan for the Senate. (App. at 54 to 55).

The three suits were heard by the consolidated District Court on June 16, 1971. The General Assembly was in session at the time, having postponed adjournment for the sole purpose of remedying any aspects of its plan which might be invalidated by the District Court.[3] But without giving the Assembly an opportunity to devise a plan acceptable to the court or requesting the parties to submit suggested plans, the court on July 2, 1971, filed an opinion and entered an interlocutory order reapportioning Virginia. As affecting the City of Virginia Beach, the General Assembly's reapportionment plan and the modifications made by the District Court are as follows:

Reapportionment Of The House Of Delegates

(a) Under the General Assembly's reapportionment plan for the House of Delegates, the City of Virginia Beach constituted the 40th House District and was allocated three delegates for its population of 172,106, or one delegate per 57,369 citizens. Since one House delegate should ideally represent only 46,485 citizens,[4] the General Assembly created

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[3] The General Assembly did not adjourn until July 8, 1971.

[4] According to the 1970 United States Census, the population of Virginia is 4,648,494. There are 100 seats in the House of Delegates.

a floater delegate for the 42d District comprised of the cities of Virginia Beach, Portsmouth (population 110,963) in the 41st District and Chesapeake (population 89,580) in the 38th District.

(b) The District Court eliminated the 42d House District, transferring its delegate to Northern Virginia. The court then resolved the resulting underrepresentation of the City of Virginia Beach by combining a portion of Virginia Beach with Norfolk. But instead of transferring to the 40th House District the 13,834 Norfolk citizens necessary to give Virginia Beach four delegates, the District Court transferred more than twice as many people—29,136—from Virginia Beach into Norfolk's 39th District to justify Norfolk's seven delegates. Further, under the court's plan, these Virginia Beach citizens would not vote in a single-member district with Norfolk residents; rather they would vote in a multi-member district with the entire 307,951 population of Norfolk.

Reapportionment Of The Senate

(a) Under the reapportionment plan for the Senate as enacted by the General Assembly, Virginia Beach was allotted one senator for 116,528 of its citizens (the 8th Senatorial District). Of the remaining Virginia Beach citizens, 40,195 would vote for one senator with 75,764 citizens of Norfolk, a total of 115,959 (the 7th Senatorial District), and 15,383 would vote for one senator with 7,111 citizens of Nansemond County and the 89,580 citizens of the City of Chesapeake, a total of 112,074 (the 14th Senatorial District). The City of Norfolk was divided into three single-member senatorial districts: the 5th (population 116,084), the 6th (population 116,103) and the 7th (population 115,-959, comprised of 75,764 citizens of Norfolk and 40,195 citizens of Virginia Beach).

(b) The District Court did not alter any senatorial district boundaries. It did, however, consolidate the 5th, 6th and 7th Senatorial Districts into one multimember district, in which three senators are to be elected at-large. This consolidation was to compensate for the exaggerated population of the 5th District caused by counting 36,693 naval personnel at the homeport of their assigned vessels—the Norfolk Naval Station—which is located entirely within the 5th Senatorial District. At least 18,000 of those stationed at the Naval Station actually live outside of the 5th Senatorial District; consolidation of the 5th, 6th and 7th Districts spread the disruptive effect of the naval personnel in the 5th District throughout the three districts. Further, as a result of the consolidation the 40,195 citizens of Virginia Beach who would have voted for one senator with 75,764 citizens of Norfolk under the General Assembly's plan are now to vote for three senators with 307,951 citizens of Norfolk.

The City of Virginia Beach unsuccessfully sought a stay of the District Court's order and a rehearing of the case from Judge John A. MacKenzie. Notice of Appeal to this Court was filed on July 15, 1971. The City of Virginia Beach's application to this Court for a stay of the District Court's order was denied by Mr. Justice Black, acting as Circuit Justice for the Fourth Circuit in Chief Justice Burger's absence, in an opinion dated July 27, 1971.

THE QUESTIONS ARE SUBSTANTIAL

In *Reynolds* v. *Sims*, 377 U.S. 533 (1964), this Court stated that the preservation of the integrity of political subdivisions may justify slight deviations from mathematical equality in state reapportionment. Thereafter, in *Kirkpatrick* v. *Preisler*, 394 U.S. 526 (1969), and *Wells* v. *Rockefeller*, 394 U.S. 542 (1969), the Court stated that this justification

was inapplicable to *congressional* redistricting and that only a good faith effort to achieve absolute mathematical equality would stand constitutional challenge. The Court has yet to decide whether the standard laid down in *Kirkpatrick* and *Wells* applies to *state* reapportionment and, if not, what degree of deviation from exact mathematical equality can be justified to maintain long-standing political boundaries.

In *Whitcomb* v. *Chavis,* 39 U.S.L.W. 4666 (U.S. June 7, 1971), and earlier decisions, the Court has recognized the potential for voter inequality that exists when large multi-member districts are employed in both houses of a bicameral legislature. The plan prepared by the District Court would have a substantial segment of the City of Virginia Beach population vote in such districts, which creates a serious question whether the court's plan is constitutional. Moreover, a significant question exists whether the District Court abused its discretion in this case by its failure to permit anyone to be heard on the merits of the court's plan, to consider key factors crucial to the determination of fair representation for the City of Virginia Beach, and to give the General Assembly of Virginia any opportunity to revise its plan.

The Constitutionality Of The General Assembly's Plan

In its 1971 reapportionment legislation the General Assembly made a good faith effort to assure that one Virginia citizen's vote would be worth as much as another's and to insure a voice for the voters of the political subdivisions of the State in the House of Delegates. A high degree of mathematical equality was achieved. The maximum deviation from the norm for representation in the Senate, where the integrity of political boundaries was not maintained, was 5.2%. The maximum deviation in the House of Delegates, where the integrity of political subdivision was preserved,

was only 9.6%. There has been no showing below that the General Assembly gerrymandered or attempted to protect the seats of incumbent assemblymen. Significantly, the black appellants find more invidious discrimination in the plan devised by the District Court than in that enacted by the Assembly.[5]

This Court has never invalidated on the grounds of population alone a *state* reapportionment plan with a degree of deviation as low as 9.6% and a total variation as low as 16.4%.[6] In *Whitcomb* v. *Chavis,* 39 U.S.L.W. 4666 (U.S. June 7, 1971, the Court disapproved a 14.52% maximum deviation and a 28.20% total variation. In *Swann* v. *Adams,* 385 U.S. 440 (1967), maximum deviations of 18.28% and 15.09% and total variations of 33.55% and 25.65% were declared excessive. The Court held in *Kilgarlin* v. *Hill,* 386 U.S. 120 (1967), that a maximum deviation of 14.84% and total variation of 26.48% must be justified. Only in the area of congressional redistricting has the Court ever held unconstitutional a plan with such a tight adherence to mathematical equality. *See Kirkpatrick* v. *Preisler,* 394 U.S. 526 (1969); *Wells* v. *Rockefeller,* 394 U.S. 542 (1969). But in *congressional* redistricting, a State's attempt to avoid fragmenting political subdivisions does not justify any variation from mathematical equality. *Kirkpatrick* v. *Preisler,* 394 U.S. at 533-34.

The District Court in this case, however, ignores the distinction that has been drawn between state and federal re-

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[5] See the "Response to Stay Motions filed by the State of Virginia and City of Virginia Beach," at 3, of William S. Thornton, *et al.,* who refer to themselves as "black appellants."

[6] "Deviation" will be used here to signify percentage deviation from the population norm per delegate (the norm for the Virginia House of Representatives is 46,485 and the Senate norm is 116,212). "Variation" is the total of the maximum deviation above (underrepresentation) and below (overrepresentation) the norm.

apportionment. *Reynolds* explicitly states that "some distinctions may well be made between congressional and state legislative representation" in applying the principle of population equality. 377 U.S. at 578. The Court explained this distinction at some length:

> "Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a State than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the State. To do so would be constitutionally valid, so long as the resulting apportionment was one based substantially on population and the equal-population principle was not diluted in any significant way. *Somewhat more flexibility may therefore be constitutionally permissible with respect to state legislative apportionment than in congressional districting.*" 377 U.S. at 578 (emphasis added).

In addition to the practical consideration that there are many more state than federal representatives and electoral districts, thereby facilitating the use of political subdivision boundaries in state reapportionment, the state-federal distinction is justified by the unique relationship that exists between political subdivisions and state legislatures. This relationship was recognized in *Reynolds*:

> "Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many States much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions." 377 U.S. at 580-81.

In Virginia, cities are entirely autonomous political entities that function apart from the counties in which they

are located. The powers exercised by a city in Virginia, as a primary unit of community operation, are established by the General Assembly. A representative in the Assembly represents his constituency in divers matters that affect or relate specifically to the functioning of his particular governmental unit, whether it is a county or city. *See* Va. Const. art. VII, §§ 2 and 3.

This Court cited similar considerations in *Abate* v. *Mundt*, 39 U.S.L.W. 4663 (U.S. June 7, 1971), in approving a plan for local government reapportionment which contained a maximum deviation of 7.1% and total variation of 11.9%. In *Abate* the Court reaffirmed that "a desire to preserve the integrity of political subdivisions may justify an apportionment plan which departs from numerical equality." 39 U.S.L.W. at 4664.

The District Court gave no consideration to the statements of this Court that slightly greater percentage deviations may be tolerated in state and local reapportionment than in congressional redistricting. Moreover, the court used as the test of the constitutionality of Virginia's reapportionment plan the language found in *Kirkpatrick*, a case dealing with federal redistricting: "a good faith effort to achieve absolute equality." (App. at 22). But even *Kirkpatrick*, and its companion case *Wells*, are not inconsistent with the principle that more freedom from the requirement of mathematical precision may be permissible in state reapportionment than in congressional redistricting. The standard applied in those cases was specifically limited to congressional reapportionment:

> "Therefore, the command of Art. I, § 2, that States create congressional districts which provide equal representation for equal numbers of people permits only the limited population variances which are unavoidable de-

spite a good-faith effort to achieve absolute equality, or for which justification is shown." 394 U.S. at 531.

Further, the District Court's holding in this case is in direct conflict with the holding of the Supreme Court of New Jersey in *Jackman* v. *Bodine,* 53 N.J. 585, 252 A. 2d 209 (1969), *after reargument,* 55 N.J. 371, 262 A. 2d 389 (1970). In *Jackman,* the court was faced with the question whether the degree of population disparity permitted by the New Jersey Constitution was "inherently intolerable" and in violation of the Fourteenth Amendment. The Constitution provided that Assembly districts could not deviate more than 20% from the population norm per delegate. The court found that such a deviation was not inherently bad, recalling its holding in the same case before reargument "that *Kirkpatrick* and *Wells* did not undermine the holding of *Reynolds* that the use of existing political subdivisions may justify a deviation from mathematical equality in state legislative districting." 262 A. 2d at 394. This Court denied certiorari. 400 U.S. 849 (1970).

The Constitutionality Of The District Court's Plan

The District Court has substituted in lieu of the General Assembly's plan its own plan of questionable constitutionality. It would deny to the City of Virginia Beach representation proportionate to its population and effectively disenfranchises thousands of its citizens. There is no doubt that the voters of the City of Virginia Beach had a more effective voice under the General Assembly's plan; there is serious doubt whether the District Court's plan is constitutional.

The plan provides that 29,136 citizens of Virginia Beach vote in the 39th House District with the entire 307,951 population of Norfolk. Political realities insure that the seven at-large delegates from this district would speak in the Gen-

eral Assembly for the 91.4% of their constituents who reside in Norfolk, largely ignoring the 8.6% who live in Virginia Beach. The resulting underrepresentation of Virginia Beach in the House of Delegates is repeated in the Senate—40,195 citizens of Virginia Beach would be required to vote in one multi-member senate district with the entire population of Norfolk. The three at-large senators that would represent this district will speak for the 88.4% of their constituents who reside in Norfolk, not for the 11.6% minority who live in Virginia Beach. Moreover, it is unlikely that a resident of Virginia Beach would ever, as a matter of practical politics, be among the seven delegates and three senators elected from these districts.

Under the court's plan Norfolk, which is entitled to proportionate representation of 6.6 delegates and 2.6 senators in the General Assembly, would be effectively represented by 7 delegates and 3 senators while Virginia Beach, which is entitled to proportionate representation of 3.7 delegates and 1.5 senators, would be represented by only 3 delegates and 1 senator. The cumulative effect of underrepresentation in both houses of Virginia's bicameral legislature infringes upon the Fourteenth Amendment rights of Virginia Beach citizens to an equal voice in the General Assembly.

The clear effect of the District Court's reapportionment plan is to overvalue the votes and representation of those persons living in Norfolk at the expense of the voters of Virginia Beach. The plan operates to minimize and cancel out the voting strength of these voters by submerging a large segment in vast multi-member districts for the election of both senators and delegates. See *Fortson* v. *Dorsey,* 379 U.S. 433, 439 (1965); *Burns* v. *Richardson,* 384 U.S. 73, 88 (1966). This Court has recognized the invidious effect of large multi-member districts used in both houses of a bicameral legislature:

"Such a tendency, we have said, is enhanced when the district is large and elects a substantial proportion of the seats in either house of a bicameral legislature, if it is multi-membered for both houses of the legislature, or if it lacks provision for at-large candidates running from particular geographic subdistricts, as in *Fortson. Burns,* 384 U.S., at 88." *Whitcomb* v. *Chavis,* 39 U.S.L.W. at 4672.

The District Court's Abuse Of Discretion

Even assuming the District Court was correct in holding the Virginia plan unconstitutional, the manner in which the court remedied the apportionment of Virginia involved at least three significant violations of procedural due process.

1.

THE DISTRICT COURT'S PREEMPTION OF THE LEGISLATIVE FUNCTION.

Since the decision of this Court in *Reynolds* and its companion cases, District Courts have consistently referred defective reapportionment plans back to the legislature. *E.g., Chavis* v. *Whitcomb,* 305 F.Supp. 1364, 1400 (S.D. Ind. 1969); *Klahr* v. *Williams,* 303 F.Supp. 224, 226-27 (D. Ariz. 1969); *Hyden* v. *Baker,* 286 F.Supp. 475, 485 (M.D. Tenn. 1968); *Bannister* v. *Davis,* 263 F.Supp. 202, 205 (E.D. La. 1966); *Connor* v. *Johnson,* 256 F.Supp. 962, 968 (S.D. Miss. 1966); *Davis* v. *Synhorst,* 225 F.Supp. 689, 693-94 (S.D. Iowa, 1964). District Courts have taken it upon themselves to reapportion a state only when a state legislature has chosen to ignore the courts' specific directives.

The decision whether the General Assembly's plan contained unjustified deviations from mathematical equality was a judicial decision; the decision how these deviations should be corrected was first and foremost a *political* decision, a

fact recognized by this Court ever since the judiciary first entered the "political thicket" of reapportionment:

> "[L]egislative reapportionment is primarily a matter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion *after having had an adequate opportunity to do so.*" *Ely* v. *Klahr,* 39 U.S.L.W. 4684, 4686 (U.S. June 7, 1971) (emphasis added), *quoting Reynolds* v. *Sims,* 377 U.S. at 586.

The District Court failed to explain why it, and not the General Assembly, had to redraw the reapportionment plan, stating only that it was "compelled to draft a plan." (App. at 5). The General Assembly was standing by ready to correct any errors in its plan, having postponed its adjournment specifically for this purpose. The General Assembly had indicated its willingness to correct any defects in its plan by redrawing the line between the 5th and 6th Senatorial Districts at the behest of the United States Attorney General. Furthermore, in preparing its reapportionment plan the General Assembly had indicated no defiance of the law as established by this Court: the senate plan passed constitutional muster and the house plan, as even the District Court seemingly concedes (App. at 5), came as close to mathematical perfection as possible while maintaining preexisting political boundary lines.

Speed could not have been a factor. It was indicated at trial that the General Assembly had prepared a new single-member reapportionment plan for the House of Delegates following the District Court's "Order on First Hearing" on May 24. Certainly the Assembly could have drawn a mathematically precise plan under the direction of the court in a very short time considering its political expertise and familiarity with the 1970 population figures.

In the words of *Reynolds,* the General Assembly should have been given "an adequate opportunity" to reapportion the State. No such opportunity was ever afforded the Virginia legislature; in fact, the District Court gave no prior indication of its holding that the Assembly's plan was unconstitutional. In its "Order on First Hearing" (App. at 43 to 46) the court did threaten to formulate a plan, but only if: (1) the General Assembly failed prior to June 15, 1971, to seek approval of a reapportionment plan from the United States Attorney General or the District Court for the District of Columbia; and (2) the court found after trial of the case any validity in the plaintiffs' objections to the General Assembly's plan. The court did not suggest that the plaintiffs' objections were valid. Thus, after the Attorney General withdrew his objection to the House of Delegates' plan, the court's stated grounds for reapportioning Virginia disappeared.

2.

THE DISTRICT COURT'S PLAN WAS CONCEIVED IN A VACUUM.

Not only did the District Court unjustifiably preempt the function of the General Assembly, the court prepared its reapportionment plan without giving the City of Virginia Beach, or anyone else, an opportunity to question its provisions or suggest alternatives. No hearing was held on the merits of the plan, and the court did not request suggested plans from the parties or seek the advice of any impartial experts in the field of reapportionment.[7]

[7] Experts in the field of reapportionment were readily available to the District Court at the University of Virginia Institute of Government, Charlottesville, Virginia.

Even if the District Court was justified in feeling compelled to prepare a reapportionment scheme, due process required some type of hearing before the court mandated so many far reaching changes. A court, unassisted, is certainly in no position to take into consideration the many geographical, economic and political considerations that should play a significant part in the reapportionment process. If a court must reapportion, it should not reapportion blindly as the District Court did in the present case, totally disregarding that the interest of the City of Virginia Beach may not be the same as those of Norfolk.

The transfer of 29,136 Virginia Beach citizens into Norfolk's multimember 39th House District came as a complete surprise. When the court's opinion and order were announced on July 2, the City of Virginia Beach was faced for the first time with the accomplished fact that 29,136 of its citizens had been transferred to Norfolk's multimember house district. This in addition to the fact that 40,195 Virginia Beach citizens had been transferred into Norfolk's multimember senatorial district.

As previously discussed, the cumulative effect of underrepresentation in both houses of the Virginia legislature contravenes the principle of equal representation for equal numbers of people. The procedure followed by the District Court in this case, however, has foreclosed the City of Virginia Beach from being heard on the unconstitutionality, or even the undesirability as a matter of policy, of the court's plan. This Court's insistance that a challenger of multimember districts carry the burden of proving that they unconstitutionally dilute or cancel the voting strength of political elements, *Whitcomb* v. *Chavis,* 39 U.S.L.W. 4666, 4672 (U.S. June 7, 1971), presupposes that the challengers be given an opportunity to meet the burden. But the City of Virginia

Beach has never had this opportunity. Consequently, the City's contention that the District Court's plan is unconstitutional cannot in due process be defeated on this appeal on the grounds that it has not met the requisite burden of proof.

3.

THE DISTRICT COURT'S FAILURE TO CONSIDER IMPORTANT FACTORS.

The District Court also abused its discretion in failing to consider factors crucial to the determination of fair and proportionate representation for the citizens of the City of Virginia Beach.

a. Population Growth

The Court properly recognized that in *Kirkpatrick* v. *Preisler,* 394 U.S. 526 (1969), this Court authorized the use of accurately projected population shifts in state reapportionment (App. at 18), and justified the transfer of a delegate from the Tidewater Area to Northern Virginia on this ground.[8] But in redistricting the City of Virginia Beach, the Court failed to properly apply this principle, making no compensation for the phenomenal growth rate of the City and actually underrepresenting the City to the advantage of Norfolk.

Total population of the City of Virginia Beach increased from 85,218 at the 1960 census to 172,106 at the 1970 census, an overall increase of over 100%. During the same period Norfolk's population has increased only 1%. Current projections indicate that by 1980 the population of Virginia Beach will exceed 275,000 and by 1985 the City will have a

[8] It is somewhat curious that the District Court used Norfolk alone in the comparison of growth rates between Northern Virginia and Tidewater, since the delegate transferred to Northern Virginia represented the City of Portsmouth and the dynamic growth areas of Chesapeake and Virginia Beach, *not* Norfolk.

population in excess of 350,000. The failure to consider this growth trend and the resulting over-representation of Norfolk at the expense of the City of Virginia Beach was clearly erroneous. As this Court stated in *Kirkpatrick*, findings as to population trends must be "applied throughout the State in a systematic, not an *ad hoc* manner." 394 U.S. at 535.

b. Diffusion of Naval Personnel

The District Court also failed to consider its own holding with respect to the necessary diffusion of naval population in reapportioning the House of Delegates. The Court held that the large number of naval personnel, counted in the 5th Senatorial District but residing elsewhere, required consolidation of the 5th, 6th and 7th Senatorial Districts. In reapportioning the House, however, the District Court allocated the entire 5,642 naval population of Little Creek Amphibious Base located in Virginia Beach (Census Tract 400.99) to Norfolk's 39th House District which already contained the 36,693 naval personnel stationed at the Norfolk Naval Station. Over 5,400 of those stationed at the Norfolk Naval Station live in Virginia Beach. Presumably, many of those stationed at the Amphibious Base also live in Virginia Beach. Yet, instead of diffusing the disruptive effect of the naval personnel throughout Norfolk and Virginia Beach and compensating Virginia Beach for the large number of naval residences within its boundaries, the District Court improperly concentrated all homeported naval personnel in the area in Norfolk's House District.

c. Readily Available Alternatives

There were also readily available alternatives, apparently not considered by the District Court, which would have assured the City of Virginia Beach representation in propor-

tion to its population without upsetting the mathematical equality of the court's plan.[9]

Single member house and senate districts drawn to encompass voters from both jurisdictions would have assured that the representatives elected from these districts would be responsive to the interests of the voters of Virginia Beach as well as the voters of Norfolk. The simplest approach would have been to include 17,349 citizens of Norfolk in Virginia Beach's 40th House District while transferring to Virginia Beach one of the seven delegates from Norfolk's 39th House District. This would balance the representation between the two cities—Norfolk would be overrepresented in the Senate and underrepresented in the House while Virginia Beach's representation would be the reverse. In *Reynolds* v. *Sims*, 377 U. S. 533, 577 (1964), this Court pointed out that "apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house."

The errors in the District Court's plan that resulted either from the court's inexperience in political matters or from the court's failure to consider and analyze the facts can not be excused on the ground that the District Court had to operate quickly. The discriminatory effect of the court's plan on the City of Virginia Beach will continue for the next *ten* years.[10] The court could have given itself sufficient time by further postponing the election or permitting the 1971 election to take place under the General Assembly's plan. The court could have given the General Assembly one week (the court

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[9] The District Court failed to achieve the mathematical perfection it sought, even disregarding the integrity of political subdivisions. The plan devised by the District Court decreased maximum deviation in the House of Delegates only from 9.6% to 6.5% and total deviation from 16.4% to 10.3%.

[10] Article II, § 6 of the Virginia Constitution provides for reapportionment of the State in 1971 and every ten years thereafter.

took two) to enact an acceptable plan. Further, the under-representation of the citizens of Virginia Beach might very well have been avoided had the court simply held a hearing on the merits of its plan. In *Whitcomb* v. *Chavis*, 39 U.S.L.W. 4666, 4677 (U.S. June 7, 1971), where the lower court had similarly erred in "broadly brushing aside state apportionment policy" without adequately scrutinizing the case or justifying its holding, this Court remanded for reconsideration.

CONCLUSION

The City of Virginia Beach respectfully requests that the Court note probable jurisdiction and hear full argument on the substantial questions presented herein, or in the alternative, remand the case to the District Court with directions to consider fully all the factors present in this case and permit the City of Virginia Beach an opportunity to be heard on the constitutionality of the District Court's plan.

Respectfully submitted,

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Dated: September 13, 1971

CERTIFICATE OF SERVICE

I, Harry Frazier, III, counsel for the City of Virginia Beach and a member of the Bar of the Supreme Court of the United States, hereby certify that I have served all parties required to be served by depositing three copies of the foregoing Jurisdictional Statement, together with three copies of the Joint Appendix, in the United States Mails, first class postage prepaid, this 13th day of September, 1971, addressed to The Honorable Andrew P. Miller, Supreme Court Building, Richmond, Virginia 23219; James M. Thomson, Esquire, P. O. Box 1138, Alexandria, Virginia 22313; Edmund D. Campbell, Esquire, 1425 H Street, N. W., Suite 822, Washington, D. C. 20005; Stanford E. Parris, Esquire, 4085 Chain Bridge Road, Fairfax, Virginia 22030; C. Stanley Dees, Esquire, 314 North Pitt Street, Alexandria, Virginia 22314; Robert L. Weinberg, Esquire, 1000 Hill Building, Washington, D. C. 20006; The Honorable Joseph H. Campbell, Commonwealth's Attorney of Norfolk, P. O. Box 1531, Norfolk, Virginia 23501; The Honorable R. F. Horan, Jr., Commonwealth's Attorney of Fairfax County, Fairfax, Virginia 22030; The Honorable Gordon B. Tayloe, Jr., Assistant City Attorney, Norfolk, Virginia, 908 City Hall Building, Norfolk, Virginia 23501; The Honorable Henry E. Howell, Jr., 808 Maritime Tower, Norfolk, Virginia 23510; The Honorable Peter K. Babalas, 210 Rotunda Building, Norfolk, Virginia 23510; The Honorable Henry L. Marsh, III, Hill, Tucker and Marsh, 214 East Clay Street, Richmond, Virginia 23219; Armand Derfner, Esquire, 520 Woodward Building, 733 15th Street, N. W., Washington, D. C. 20005; Benjamin W. Dulany, Esquire, 822 Southern Building, Washington, D. C.; C. V. Spratley, Jr., Esquire, P. O. Box 575, Newport News, Virginia 23607; and The

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71-373

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1971

No. A-83 71-373

CITY OF VIRGINIA BEACH, *Appellant,*	v.	HENRY E. HOWELL, JR., ET AL., *Appellees.*
CITY OF VIRGINIA BEACH, *Appellant,*	v.	STANFORD E. PARRIS, ET AL., *Appellees.*
CITY OF VIRGINIA BEACH, *Appellant,*	v.	CLIVE L. DUVAL, II, ET AL., *Appellees.*

No. A-84 71-364

JOAN S. MAHAN, ET AL., *Appellants,*	v.	HENRY E. HOWELL, JR., ET AL., *Appellees.*
EDGAR A. PRICHARD, ET AL., *Appellants,*	v.	CLIVE L. DUVAL, II, ET AL., *Appellees.*
EDGAR A. PRICHARD, ET AL., *Appellants,*	v.	STANFORD E. PARRIS, ET AL., *Appellees.*

Joint Appendix of the City of Virginia Beach and Virginia State Board of Elections—Joan S. Mahan, et al.

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IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division

Civil Action No. 105-71-N

Henry E. Howell, Jr., et al.,

v.

Joan S. Mahan, et al.

Alexandria Division

Civil Action No. 111-71-A

Stanford E. Parris, et al.,

v.

Edgar A. Prichard, et al.

Richmond Division

Civil Action No. 174-71-R

Clive L. DuVal, II, et al.,

v.

Edgar A. Prichard, et al.

OPINION

Albert V. Bryan, Circuit Judge:

The Constitution of Virginia, Article II, Section 6 directs, inter alia, that "members of the Senate and of the House of Delegates shall be elected from electoral districts

established by the General Assembly [the legislature]" and that "[e]very election district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district." Article IV provides for a Senate of not more than 40 and not less than 33 members, and a House of Delegates of not more than 100 and not less than 90. Reapportionment of the Commonwealth into districts was required for 1971 and every ten years thereafter.

Validity of the General Assembly's present effort to meet this obligation is at stake in these three suits. By an Act approved March 1, 1971, Chapter 116, Acts of Assembly, Code § 24.1-12.1, the State was divided into 52 districts for the election of 100 members of the House of Delegates. This enactment is here attacked by the plaintiffs in DuVal, et al. v. Prichard, et al. and Parris, et al. v. Prichard, et al., as well as by William S. Thornton, et al., plaintiff-intervenors in the DuVal case, chiefly as failing to provide "representation in proportion to the population of the district." Aside from this common ground, *DuVal* strikes at the provision for multi-member districts, while *Parris* complains of the division of Fairfax County into two districts of five delegates each, rather than its continuance as a whole district with 10 delegates. The *Thornton* plaintiffs object that black residents of several metropolitan areas are denied full voting strength by multi-member districts.

By another Act approved March 1, 1971, Chapter 120, Acts of Assembly Code § 24.1-14.1 as amended by an Act approved June 14, 1971, Chapter 246, Acts of Assembly, the State was partitioned into 40 districts for election of 40 senators, one from each district. This Act is not questioned by the *DuVal* and *Parris* original or intervening plaintiffs.

But Howell, et al. v. Mahan, et al. condemns it as breaching the Virginia Constitution's demand for equal district representation. In this legislation the City of Norfolk has been split into three districts: 5th, 6th and 7th, the last supplemented by a slice of abutting City of Virginia Beach. Specifically, the *Howell* protest is that as drawn the districts are unbalanced (1) by the allocation of servicemen aboard Navy ships "home-ported" in Norfolk, (2) by including Government reservations which do not permit political campaigns thereon, and (3) in circumscribing the Negro electors principally into one district.

Obviously, in each of these three suits the protestations, if sustained, would establish contraventions of the Equal Protection Clause of the Fourteenth Amendment and transgress the now familiar doctrine of "one man, one vote." Kirkpatrick v. Preisler, 394 US 526, 530 (1969); Wells v. Rockefeller, 394 US 542, 546 (1969); Reynolds v. Sims, 377 US 533, 568 (1964). Our search, therefore, is a factual scrutiny of the reapportionment Acts for such deviations, if any, as may be impermissible under the State and Federal constitutions.

With the population count of Virginia by the 1970 decennial census amounting to 4,648,494, each of the 100 members of the House of Delegates should represent approximately 46,485 persons. Nevertheless, we find throughout the State numerous instances of delegate representation which have not been so evened in the reapportionment statutes. Seemingly, the variances are traceable to the desire of the General Assembly to maintain the integrity of traditional county and city boundaries. Senatorial assignments have uniformly been restricted to one senator per district. The only attack on the senatorial plan is the division of the City of Norfolk into three districts.

A foremost example of disparateness is the 16th district. It is composed of Rockingham, Page and Shenandoah counties and the City of Harrisonburg, with a population of 101,928, and allotted two delegates—one for each 50,964—thus exceeding the norm of 46,485, and under-represented by 9.6%. On the contrary, district 12 comprising Campbell County has a delegate for 43,319 and so is over-represented by 6.8%, making the total disparity 16.4%.[1]

This variation is sufficient to condemn the plan. In reapportionment cases the burden is on the State to justify deviations from parity by "legitimate considerations incident to the effectuation of a rational state policy." Reynolds v. Sims, supra, 377 US 533, 579 (1964); see Swann v. Adams, 385 US 440, 444 (1967). The State has proved no governmental necessity for strictly adhering to political subdivision lines. Further, the General Assembly has not consistently implemented its asserted policy, as witness the division of Fairfax County.

These unconstitutional disparities can be remedied in most instances by merely shifting district lines, leaving undisturbed the numerical allocation of delegates to districts.

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[1] The Court notes that this range of deviation may exceed 16.4%. The Forty-second District, a floater shared by the cities of Chesapeake, Portsmouth and Virginia Beach, together with Chesapeake's two-delegate complement in the Thirty-eighth District, causes an over-representation of Chesapeake voters by 14% according to the calculation of the *DuVal* plaintiffs. The statewide range of deviation would therefore be 23.6%. Plans including a variation of approximately that amount have not survived Supreme Court scrutiny. Whitcomb v. Chavis, ... U.S. ....., 39 LW 4666 (June 7, 1971); Swann v. Adams, 385 U.S. 440 (1967). The Supreme Court has indicated approval of the DuVal method of computing percentage deviations for floterial districts in Kilgarlin v. Hill, 386 U.S. 120, 124 (1967). The State argues that the deviation for Chesapeake is only +.2%, the average deviation for all areas which share the floater delegate. Under either mode of calculation, we find that the statewide range of deviation will not pass constitutional muster.

It is an adequate remedy whenever malapportionment arises from over-population in a district which is contiguous to one or more under-populated districts. We have endeavored to pursue this adjustment wherever feasible because it fosters the clear preference of the Assembly to adopt recognized political subdivision lines in apportioning delegates. An exception, however, to the effectiveness of this remedial device necessarily arises when a cluster of districts is over-represented, and there is no contiguous district which has an off-setting under-representation. The drafting of district lines to dissolve this regional concentration of disparity is formidable; it is not achievable at all if the integrity of political subdivisions is mandated.

To accomplish constitutional reapportionment throughout Virginia we have been compelled to draft a plan consisting of the Assembly's layout with necessary amendments. The plan of reapportionment now drawn by the court follows the Assembly's district numbers.

As to each district there is given the number of delegates, the total population, the composition by political subdivisions of present boundaries and, where enlarged or reduced, the percentage of the increase or decrease. The source of every change is either existing political subdivisions or the descriptions provided by Enumeration Districts, (ED) Block Groups (BG) or Census Tracts (CT) provided by the United States Bureau of the Census for 1970. The number of persons in the district exceeding or falling beneath the norm of 46,485 is expressed in percentages, with a plus (+) percentage indicating an excess in population and a minus (—) showing a population deficiency; consequently, a plus population percentage reveals an under-representation, with a minus sign pointing to an over-representation. The plan is this:

Districts for the Virginia House of Delegates shall be constituted as follows:

1. First: 2 delegates; existing population 100,722—a deviation of +8.3%—consisting of Dickenson, Lee, Wise and Scott counties with the town of Norton. This district shall be altered by a transfer of Enumeration Districts 14 (pop. 1,676), 19 (pop. 1,004), 23 (pop. 986), 24 (pop. 1,309) and 25 (pop. 1,088) in Scott County to the contiguous Second District, reducing the total population of the First to 94,659 (100,722 less 6,063) creating a deviation of +1.8%.

2. Second: 2 delegates; existing population 87,041—a a deviation of —6.4%—consisting of the City of Bristol and the counties of Smyth and Washington. This district shall gain ED's 14, 19, 23, 24 and 25 from Scott County, contiguous to Washington County, bringing the total population to 93,104 (87,041 plus 6,063) leaving a deviation of +0.14% per seat.

3. Third: 2 delegates; existing population 96,420—a deviation of +3.7%—consisting of Russell, Tazewell and Buchanan counties. This district shall remain unchanged.

4. Fourth: 1 delegate; existing population 49,279—a deviation of +6.0%—consisting of Wythe, Grayson and Bland counties along with the City of Galax. This district will lose ED's 2 (pop. 331) and 23 (pop. 1,271) from Wythe County to be added to the contiguous Sixth District, reducing the total population of the Fourth to 47,677, with a resulting deviation of +2.56%.

5. Fifth: 1 delegate; existing population 49,829—a deviation of +7.2%—made up of Craig, Giles and Pulaski counties. This district shall lose all of Craig County (pop.

3,524) to the Eighth District, leaving the Fifth with a total population of 46,305 (49,829 less 3,524), a deviation of —0.39%.

6. Sixth: 2 delegates; existing population 91,620—a deviation of —1.5%—consisting of Carroll, Floyd and Montgomery counties and the City of Radford. This district shall gain ED's 2 and 23 from contiguous Wythe County of the Fourth District, leaving a total population in the Sixth of 93,222 (91,620 plus 1,602) producing a deviation of +0.27%.

7. Seventh: 2 delegates; existing population 92,115—a deviation of —0.9%—consisting of the City of Roanoke. This district shall remain unaltered.

8. Eighth: 2 delegates; existing population 89,321—a deviation of —3.9%—consisting of Roanoke County and the City of Salem. To this district shall be added contiguous Craig County from the Fifth, leaving the Eighth with an aggregate population of 92,845 (89,321 plus 3,524), which produces a deviation of —0.14%.

9. Ninth: 2 delegates; existing population 91,561—a deviation of ....1.5%—consisting of Franklin, Rockbridge and Bedford counties along with the cities of Bedford, Lexington and Buena Vista. This district shall remain unchanged.

10. Tenth: 1 delegate; existing population 46,215—a deviation of —0.6%—consisting of the counties of Alleghany and Botetourt and the cities of Clifton Forge and Covington. This district will remain unchanged.

11. Eleventh: 2 delegates; existing population 91,857—a deviation of —4.2%—consisting of the city of Lynchburg and the counties of Amherst and Nelson. The district

shall gain ED's 26 (pop. 1,070) and 31 (pop. 1,022) from Albemarle County of the contiguous Twenty-sixth District, bringing the population of the Eleventh up to 93,949 (91,857 plus 2,092), leaving a deviation of +1.0%.

12. Twelfth: 1 delegate; existing population 43,319—a deviation of —6.8%—consisting of only Campbell County. This district shall be augmented in size by the addition of ED's 8 (pop. 678), 9 (pop. 836), 10 (pop. 260) and 12 (pop. 990) from contiguous Charlotte County of the Twenty-eighth District, bringing up the total population of the Twelfth to 46,083 (43,319 plus 2,764) resulting in a deviation of —0.9%.

13. Thirteenth: 3 delegates; existing population 144,625 —a deviation of +3.7%—consisting of the counties of Patrick, Henry, Pittsylvania and the City of Martinsville. This district shall be left unchanged.

14. Fourteenth: 1 delegate; existing population 46,391 —a deviation of —0.2%—consisting of the City of Danville. It will not be altered.

15. Fifteenth: 2 delegates; existing population 93,152— a deviation of +0.2%—consisting of the cities of Staunton and Waynesboro and the counties of Augusta, Highland and Bath. This district will remain unchanged.

16. Sixteenth: 2 delegates; existing population 101,928 —a deviation of +9.6%consisting of Rockingham, Page and Shenandoah counties, plus the City of Harrisonburg. This district shall be reduced in size by excising the easternmost Enumeration Districts from Rockingham County, adding them to the adjacent Twenty-sixth District, where Albemarle and Greene Counties border on Rockingham County. The area removed from the Sixteenth will include

ED's 20 (pop. 1,158), 23 (pop. 1,223), 24 (pop. 1,441), 27 (pop. 1,143), 28 (pop. 898) and 29 (pop. 0—but must be included to provide *contiguity*). This will decrease the population of the Sixteenth to 96,065 (101,928 less 5,863), reducing the deviation to +3.30%.

17. Seventeenth: 2 delegates; existing population 93,314 —a deviation of +0.4%—consisting of the counties of Frederick, Clarke, Fauquier and Warren, including also the City of Winchester. No change is to be made here.

18. Eighteenth: 5 delegates; existing population 246,509 —a deviation of +6.1%—consisting of the cities of Fairfax and Falls Church and that portion of Fairfax County which lies in the Tenth Congressional District as delineated in Virginia Code, § 24.1-4.1. This district shall be changed by deleting the City of Fairfax and Fairfax County CT's 4030 (pop. 2,825) and 4031 (pop. 4,298), but adding Fairfax County CT's 4035 (pop. 6,511) and 4036 (pop. 3,396). This results in an adjusted total population of the Eighteenth of 227,323, which produces a deviation of —2.3%.

19. Nineteenth: Formerly 5 delegates—now changed to 6; existing population 241,254—a deviation of +3.8%—consisting of that part of Fairfax County situated in the Eighth Congressional District as set forth in Virginia Code § 24.1-4.1, supra. This district shall be altered to include CT's 9001 (pop. 1,595) and 9002 (pop. 8,008) along with ED's 63 (pop. 631), 71 (pop. 1,255) and 72 (pop. 956) from CT 9006, all from Prince William County, together with Fairfax City (21,970) and that portion of Fairfax County Designated as the Eighth Congressional District, supra, less CT's 4035 and 4036, but adding CT's 4030 and 4031. The resulting district will then have a total population of 272, 885, producing a deviation of —2.2%.

20. Twentieth: 3 delegates; existing population 148,252—a deviation of +6.3%—consisting of the counties of Loudoun and Prince William. This district will be altered by deleting CT's 9001, 9002 and ED's 63, 71 and 72 from CT 9006, all from Prince William County to be assigned to the Nineteenth. This change will leave the total population of the Twentieth at 135, 807, producing a deviation of —2.6%.

21. Twenty-first: 2 delegates; existing population 110,938—a deviation of +2.3% (calculated with reference to the floater described as District Twenty-three)—consisting of the City of Alexandria. This will not be changed.

22. Twenty-second: 3 delegates; exising population 174,284—a deviation of +2.3% (calculated with reference to the floater described as District Twenty-three)—consisting of the County of Arlington. This district will remain unaltered.

23. Twenty-third: 1 delegate; existing population 285,222—a deviation of +2.3% (calculated with reference to Districts Twenty-one and Twenty-two)—this is a floater district consisting of the City of Alexandria and the County of Arlington. Nothing will be changed here.[2]

24. Twenty-fourth: 2 delegates; existing population 90,441—a deviation of —2.7%—consisting of the counties of Hanover, Caroline and Stafford, plus the City of Fredericksburg. No adjustment has been made here.

25. Twenty-fifth: 1 delegate; existing population 45,847—a deivation of —1.4%—consisting of the counties of

[2] See note 1, supra, regarding computation of Chesapeake under the alternative theory espoused in *DuVal*. Applying this theory to the floater here results in a deviation of —0.1% for Alexandria and a deviation of +3.9% for Arlington.

Culpeper, Rappahannock, Madison and Orange. No change will occur here.

26. Twenty-sixth: 2 delegates; existing population 89,529—a deviation of —3.7%—consisting of the counties of Albemarle, Greene and Fluvanna and the City of Charlottesville. This district will be altered in order to adjust the imbalances present in the adjoining Sixteenth and Eleventh districts, discussed above. Added to the Twenty-sixth will be ED's 20, 23, 24, 27, 28 and 29 from adjacent Rockingham County (Sixteenth) on the west; lost to the contiguous Nelson County (Eleventh) on the south will be ED's 26 (pop. 1,070) and 31 (pop. 1,022) from Albemarle County. These changes will produce a total population in the Twenty-sixth of 93,300, with a resulting deviation of +0.35%.

27. Twenty-seventh: 1 delegate; existing population 48,531—a deviation of +4.4%—consisting of the counties of Appomattox, Buckingham, Cumberland, Amelia and Prince Edward. This district shall lose ED's 1 (pop. 726), 2 (pop. 1,038) and 3 (pop. 532) from Amelia County to the adjacent Thirty-first District, reducing the population of the Twenty-seventh to 46,235 (48,531 less 2,296), producing a deviation of —0.54%.

28. Twenty-eighth: 1 delegate; existing population 48,516—a deviation of +4.4%—consisting of the counties of Halifax and Charlotte along with the City of South Boston. This district will be diminished in population by removing ED's 8 (pop. 678), 9 (pop. 836), 10 (pop. 260) and 12 (pop. 990) in Charlotte County to be added to contiguous Campbell County in the Twelfth. The change will reduce the population of the Twenty-eighth to 45,752 (48,516 less 2,764), producing a deviation of —1.6%.

29. Twenty-ninth: 1 delegate; existing population 45
598—a deviation of —1.9%—consisting of the counties
Brunswick and Mecklenburg. No alteration will be ma
here.

30. Thirtieth: 1 delegate, existing population 45,1
(includes 9,000 from annexed area)—a deviation
—3.0%—consisting of the City of Petersburg. This di
trict shall keep its present delineation.

31. Thirty-first: 1 delegate; existing population 46,9
(includes loss from annexation)—a deviation of +1.1%-
consisting of the counties of Dinwiddie, Lunenburg a
Nottoway. This district shall be altered in order to redu
inbalances in the adjacent Twenty-seventh and Forty-fif
districts. The Thirty-first will lose ED's 16 (pop. 489
17 (pop. 1,392) and 18 (pop. 841) of Dinwiddie Coun
to the contiguous Forty-fifth District, but the Thirty-fir
District will be augmented by the addition of ED's 1, 2 a
3 from Amelia County (Twenty-seventh), as discuss
above. These changes will leave the Thirty-first with
total population of 46,552 (46,978 less 2,722, plus 2,29
with a resulting deviation of +0.14%.

32. Thirty-second: 1 delegate; existing population 48
193—a deviation of +3.7%—consisting of the counti
of Louisia, Spottsylvania [sic], Goochland and Powhata
No change will occur here.

33. Thirty-third: 5 delegates; existing population 249
621—a deviation of —3.4% (calculated with reference
the floater described as District Thirty-five)—consistin
of the City of Richmond. This will not be altered.

34. Thirty-fourth: 3 delegates; existing populati
154,364—a deviation of —3.4% (calculated with referen

to the floater described as District Thirty-five)—consisting of the County of Henrico. No change will be effected here.

35. Thirty-fifth: 1 delegate; existing population 403,985 —a deviation of —3.4% (calculated with reference to Districts Thirty-four and Thirty-five)—this is a floater district consisting of the City of Richmond and the County of Henrico. This district will remain unaltered.[3]

36. Thirty-sixth: 2 delegates; existing population 91,-952—a deviation of —1.1%—consisting of the County of Chesterfield and the City of Colonial Heights. This district will be left unchanged.

37. Thirty-seventh: 1 delegate; existing population 47,-146—a deviation of +1.4%—consisting of the City of Hopewell and the County of Prince George excluding those portions encompassed in the Thirtieth District. No change will be effected here.

38. Thirty-eighth: Formerly, 2 delegates; existing population 89,580—a deviation of +0.2% (calculated with reference to the floater comprising the Forty-second District, discussed below)—consisting of the City of Chesapeake. The Thirty-eighth District will be altered in order to evenly distribute the imbalance in this section of the State resulting from the transfer of one delegate to Northern Virginia as discussed above. The new Thirty-eighth will be allotted 4 delegates (thereby eliminating the Forty-second) and will encompass only the City of Chesapeake, excepting CT's 212 (pop. 2,316), 213.01 (pop. 1,887) and 215.01 (pop. 3,396) and the City of Portsmouth (pop. 110,-

[3] See note 1, supra. Under the Duval computation, Richmond City and Henrico County have population deviations of —4.4% and —1.8%, respectively.

963) giving a total population of 192,944 which is a deviation of +3.77%.

39. Thirty-ninth: 7 delegates; existing population 307,951—a deviation of —5.4%—consisting of the City of Norfolk. This district shall gain CT's 400 (pop. 2,087), 400.99 (pop. 5,642), 402 (pop. 2,649), 404 (pop. 3,877), 406 (pop. 1,247), 408 (pop. 7,793) and 412 (pop. 5,841) from the City of Virginia Beach. This will give the Thirty-ninth a population of 337,087 (307,951 plus 29,136) producing a deviation of +3.6%.

40. Fortieth: 3 delegates; existing population 172,106 —a deviation of +0.2% (calculated with reference to the floater comprising the Forty-second)—consisting of the City of Virginia Beach. This district shall be altered by assigning to the Thirty-ninth CT's 400, 400.99, 402, 404, 406, 408 and 412 of Virginia Beach, as shown above, leaving the Fortieth with a total population of 142,970 (172,106 less 29,136), with a resulting deviation of +2.5%.

41. Forty-first: 2 delegates; existing population 110,963 —a deviation of +0.2% (calculated with reference to the floater comprising the Forty-second)—consisting of the City of Portsmouth. The Forty-first District is hereby eliminated as a separate district since Portsmouth is now made part of the Thirty-eighth.

42. Forty-second: 1 delegate; existing population 372,649—a deviation of +0.2% (calculated with reference to Thirty-eighth, Fortieth and Forty-first districts, now consolidated into the Thirty-eighth and Fortieth)—consisting of the cities of Chesapeake, Portsmouth and Virginia Beach. This district is hereby eliminated, with Virginia

Beach comprising the Fortieth, and Chesapeake (part) and Portsmouth comprising the Thirty-eighth, as shown above.[4]

43. Forty-third: 1 delegate; existing population 45,024 —a deviation of —3.2%—consisting of Nansemond County and the City of Suffolk. This district will be altered by the addition of CT's 212, 213.01 and 215.01 from Chesapeake and also by the addition of the counties of Isle of Wight (pop. 18,285) and Southampton (pop. 18,582), along with the City of Franklin (pop. 6,880). This district will also be assigned another delegate, bringing the total number of delegates to 2, with a total population of 96,370. This produced a deviation of +3.66%.

44. Forty-fourth: 1 delegate; existing population 43,747—a deviation of —5.9%—consisting of the counties of Isle of Wight and Southampton and the City of Franklin. This district shall be eliminated since the territory which it embodied is now made part of the Forty-third, as shown above.

45. Forty-fifth: 1 delegate; existing population 43,708 —a deviation of —6.0%—consisting of the counties of Greensville, Sussex, Surry, Charles City and New Kent, and the City of Emporia. This district shall be augmented by the addition of ED's 16 (pop. 489), 17 (pop. 1,392) and 18 (pop. 841) from Dinwiddie County adjacent to Sussex and Greensville counties. This change will brnig the population of the Forty-fifth to 46,430 (43,708 plus 2,722), resulting in a deviation of —0.12%.

46. Forty-sixth: 1 delegate; existing population 43,446 —a deviation of —6.5%—consisting of the counties of

[4] See note 1, supra. Applying DuVal's theory Virginia Beach would have had a deviation of +7.3% and Portsmouth a deviation of +6.1%.

Accomack and Northhampton. This is the maximum population deviation permitted in any district under the court's plan of reapportionment. The disparity is justified by the geographical location of the counties, known as the Eastern Shore. They form a neck of land separated by the Chesapeake Bay and the Atlantic Ocean from the mainland of Virginia, and are contiguous only to Maryland. The natural isolation of Accomack and Northampton counties warrants the deviation from the population standard. Consequently, the district shall remain as presently constituted.

47. Forty-seventh: Formerly: 1 delegate; existing population 44,387—a deviation of —4.5%—consisting of the counties of King George, Westmoreland, Northumberland, Richmond and Lancaster. This district shall be changed by the addition of ED's 1 (pop. 810) and 2 (pop. 949) out of Essex County (Forty-eighth), increasing the population of the Forty-seventh to 46,146 (44,387 plus 1,759), with the resulting deviation at —0.729%.

48. Forty-eighth: 1 delegate; existing population 47,609 —a deviation of +2.4%—consisting of the counties of Essex, King and Queen, Middlesex, Gloucester, Mathews and King William. This district shall be reduced in size by the transfer of ED's 1 and 2 from Essex County to be assigned, as mentioned above, to the Forty-seventh. The total population of the Forty-eighth after the change will be 45,850, with a deviation of —1.366%.

49. Forty-ninth: 3 delegates; existing population 138,177—a deviation of —.9%—consisting of the City of Newport News. No change is ordered here.

50. Fiftieth: 2 delegates; existing population 120,779—a deviation of —2.7%—(calculated with reference to the

oater described as District Fifty-two) consisting of the City of Hampton. This district will remain unaltered.

51. Fifty-first: 1 delegate; existing population 60,125—deviation of —2.7%—(calculated with reference to the loater described as District Fifty-two) consisting of the City of Williamsburg and the counties of York and James City. No change will be effected here.

52. Fifty-second: 1 delegate; existing population 180,004—a deviation of —2.7%—(calculated with reference to Districts Fifty and Fifty-one). This is a floater district consisting of the cities of Hampton and Williamsburg and the counties of York and James City. No alteration will be made here.[5]

Previously, we have alluded to the difficulty of equalizing districts when there is an over-represented group and there is no adjacent district which is under-represented. Examination of the delegate plan just outlined will reveal that this situation is sharply manifest in the Legislature's plan in districts 39, 43 and 44—City of Norfolk and Nansemond, Southhampton and Isle of Wight counties—located in the Tidewater area. They are characterized by under-population of 4.8% and thus over-represented. Districts 18, 19 and 20 are a group in Northern Virginia non-contiguous to the under-populated districts of Tidewater. They are beset with an over-population with an average of 5.4%.

Actually, this is the apple of discord between the parties plaintiff in *Duval-Parris* and the defendants who are upholding the current legislation. The only solution is the transfer of a delegate from Tidewater to Northern Vir-

[5] See note 1, supra. Applying the DuVal theory would produce a —2.7% deviation for Hampton, a —2.8% deviation for the combined populations of the City of Williamsburg and the counties of James City and York.

ginia, and it must be ordered. This is the only instance in which a delegate is transferred from one sector of the State to another. It is justified by the pervasive under-representation in districts in Northern Virginia, and over-representation in Tidewater, as earlier explained.

It is further justified by consideration of the growth trend of the Northern Virginia section as compared to that of Tidewater. Statewide, the average increase of population in the last 10 years has been at the rate of 17.2%. Northern Virginia's over the same period has increased 46%, while during this same span Norfolk's increment has been only 1%. Authoritative estimates put the expansion expected for Northern Virginia at 3.1% and Norfolk's at .1% annually. This is an element to be weighed, for apprehended enlargement may be appraised in determining the measure of legislative representation. Kirkpatrick v. Preisler, supra, 394 US 526, 535 (1969).

In mapping the delegate districts to eliminate unconstitutional malapportionment the prayers of the plaintiffs in *DuVal* and *Thornton* for single-member districts have not been overlooked, but they have not been granted. In Whitcomb v. Chavis, supra, ... US ....., 39 LW 4666 (June 7, 1971), multimember districts are declared not per se unconstitutional. Therefore, the Assembly's adoption of the representational theory which embodies multi-member rather than single-member districts is accepted. We are not unaware of the preference for single-member districts in "large" areas expressed in Connor v. Johnson, ... US ....., 39 LW 3535, 3535-3536 (June 3, 1971), but we do not think this decision is preclusive here. The circumstances here shown permit the utilization of multi-member districts, and we think none of them is too "large" to be outlawed by *Connor*. The holding in that case required the

elimination of a twelve member district; the court's plan delineates no district with more than seven members.

Likewise, we do not grant the prayer of *Parris* for the conversion of Fairfax County into an undivided district. The General Assembly is not shown to our satisfaction to have been reversibly wrong in this determination. Further, the *Parris* claim of the lack of equal protection is nullified by the splitting of counties elsewhere to avoid population unevenness. Again, a district of 11 delegates could run into *Connor* criticism.

Senatorial Districts

As heretofore noted, the General Assembly chose to divide the State into forty single-member Senatorial Districts. In applying this policy to Norfolk, and to ensure numerical equality, a contiguous urban area of the City of Virginia Beach, with its population count of 40, 195, was added to Norfolk's 307,951 persons. The entire area was then divided into three single-member Senatorial Districts, the Fifth, Sixth and Seventh, which are equal according to the Federal Census, numerically and conform almost ideally to the one person, one vote requirement.

To do so, however, the entire count of 36,693 naval personnel "home-ported" at the U.S. Naval Station, Norfolk, were assigned to the Fifth Senatorial District. Factually, it is without dispute that only 8,100, or so, of such crewmen actually live aboard the vessels which are assigned to a Census Tract within the Fifth Sentaorial District[6] The remainder, with their families, resides for the most part in the City of Norfolk, but to a considerable degree *not* in the Fifth Senatorial District.

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[6] Census policy allocates nearly all other individuals to the place where they reside.

The court has before it, therefore, evidence that 36,693 naval personnel are allocated to the Fifth Senatorial District because that is where official Census Tracts count them, when, in fact, at least 18,000[7] live outside of the Fifth Senatorial District, but generally within the area encompassed by the Fifth, Sixth and Seventh Districts. The allocation of the crewmen of vessels "home-ported" at Norfolk to certain Census Tracts is completely acceptable for Census purposes. This suffices for Congressional redistricting since most of them reside within the Second Congressional District. However, it is demonstrably inaccurate as applied to the individual Senatorial Districts. It is also constitutionally impermissible to ignore their presence for the purpose of legislative redistricting. Davis v. Mann, 377 US 678, 691 (1964).

If the single-member districts of the area were allowed to stand, the Fifth Senatorial District, in actuality, could fall far short of the one man, one vote ideal. Similarly, the Sixth and Seventh Districts could also be considerably out of proportion.

The court concludes, therefore, that the only way to correct these latent disparities is to provide for one multi-member Senatorial District for the area presently comprising Districts Five, Six and Seven, wherein an at-large election shall be conducted. By such action naval "home-ported" personnel can be properly spread through the entire area. Multi-member districts in such cases are not unconstitutional. Whitcomb v. Chavis, supra, ... US ....., 39 LW 4666 (June 7, 1971). With this determination, we have

[7] A Navy housing sampling taken in the same month as the official Census indicated about 50% of the "home-ported" crewmen maintained residences with Zip Code numbers outside of the Fifth Senatorial District. Upwards of 10,000 live off the base, but within the Fifth Senatorial District.

no occasion to descant separately upon the other grounds urged by *Howell* for a unitary Senatorial District at Norfolk.

As hereinbefore mentioned the court is cognizant of the recent observation in Connor v. Johnson, supra, ... US ....., 39 LW 3535, 3535-3536 (June 3, 1971), that single-member districts are preferable to "large multi-member districts" in reapportionment plans fashioned by District Courts, but again we do not consider this multi-member district to be "large" within the intent of that opinion.

The Court has no survey data as to place of actual residence sufficiently precise to permit creation of three single-member districts.

For an immediate understanding of the appearance of the delegate districts as now drawn, a chart depicting generally and substantially the mosaic will be presented herewith as an appendix. When superimposed upon the Legislature's reapportionment map, the changes now decreed become clearly evident.

Conclusion

We have undertaken a complete reapportionment of the State, rather than attempting a piecemeal correction confined to the direct targets of the complaints. This, we understand, is the precept of Burns v. Richardson, supra, 384 US 73, 83 (1966). While we have endeavored to reach a perfect mathematical division, we have been unable to do so because of the multiplicity of delegates, the geography of the State and the diversity of population concentrations. The highest degree of under-representation is 3.8% (Thirty-eighth), with the largest over-representation 3.4% (Thirty-

third, Thirty-fourth and Thirty-fifth).[8] The resulting spread of slightly over 7% is a sizeable improvement over the State's plan, which embodied a total variance in excess of 16%.[9] This apportionment is the best we can devise. We believe it comes within passable constitutional limits as "a good-faith effort to achieve absolute equality." Kirkpatrick v. Preisler, supra, 394 US 526, 531 (1969).

An order will now be entered effectuating this opinion.

[8] In this arithmetic Accomack and Northampton counties have not been included. The new reapportionment has not involved them because of their isolation from the remainder of the State. They make up the narrow peninsula separated from Virginia's mainland by Chesapeake Bay and the Atlantic Ocean. Their exception does not materially affect the submitted plan.

[9] The court's plan will be in slight excess of 8% disparity under the DuVal mode of computing floterial districts, footnote 1, supra.

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division

Civil Action No. 105-71-N

Henry E. Howell, Jr., et al

v.

Joan S. Mahan, et al

Alexandria Division

Civil Action No. 111-71-A

Stanford E. Parris, et al

v.

Edgar A. Prichard, et al

Richmond Division

Civil Action No. 174-71-R

Clive L. DuVal, II, et al

v.

Edgar A. Prichard, et al

INTERLOCUTORY ORDER

On June 16, 1971 the Court as constituted for the trial of each of these actions heard the arguments of counsel upon the evidence adduced by all of the parties, including

the plaintiff- and defendant-intervenors, in each of these actions, consisting of depositions and documentary evidence, as well as explanatory exhibits presented with the arguments, and upon consideration thereof with the evidence proffered by plaintiff-intervenors William S. Thornton et al., on June 17, 1971, the respective courts in a joint written opinion this day filed have stated their findings of fact and conclusions of law in their respective causes. For the reasons stated in the opinion, it is, in all of said actions, ADJUDGED, ORDERED and DECREED as follows:

1. That the Acts of the General Assembly of Virginia generally known as the reapportionment statutes of 1971, and more particularly designated as the Act approved March 1, 1971, Chapter 116, Code of Virginia Section 24.1-12.1, and the Act approved March 1, 1971, Chapter 120, Code of Virginia Section 24.1-14.1, as amended by an Act approved June 14, 1971, Chapter 246, be, and each of them, is hereby declared invalid on the ground that they include provisions violating the Equal Protection Clause of the Constitution of the United States;

2. That members of the Senate and of the House of Delegates of the General Assembly of Virginia be elected from the electoral districts described in said opinion, anything in the existing statutes of the Commonwealth of Virginia to the contrary notwithstanding;

3. That such of the defendants herein, and their successors in office, as are charged by law with the conduct of said elections, as well as the agents, employees and attorneys thereof, be, and each of them is hereby, enjoined and restrained from conducting any of said elections in any electoral districts except those established and specified in said opinion as aforesaid;

4. That the Governor and Attorney General of Virginia be, and they are now, dropped as parties to these actions;

5. That the plaintiffs recover the cost allowed by law; and

6. That jurisdiction of each of these suits be, and it is hereby, retained for enforcement of this order, the determination of any related matter, and for any other appropriate purpose.

/s/ ALBERT V. BRYAN
United States Circuit Judge

/s/ OREN R. LEWIS
United States District Judge

/s/ JOHN A. MCKENZIE
United States District Judge

/s/ ROBERT R. MERHIGE, JR.
United States District Judge

Entered 1 P.M.
July 2, 1971;

in the Clerk's office
Alexandria, Richmond
and Norfolk, Virginia

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action No. 105-71-N

Henry E. Howell, Jr., et al.,

Plaintiffs

v.

Joan S. Mahan, et al.,

Defendants

Civil Action No. 175-71-R

Clive L. DuVal, 2d, et al.,

Plaintiffs

v.

Edgar A. Prichard, et al.,

Defendants

ORDER

This matter came on to be heard upon

(1) Motion of the defendants for the entry of an order staying the effect of the order of this Court of July 2, 1971, pending appeal to the Supreme Court of the United States; and

(2) Petition of the City of Virginia Beach for the entry of a like stay order pending appeal to the Supreme Court

of the United States and asking, in effect, for further argument on reapportionment, agreeing, however, that as an original intervenor it had only sought affirmation of its 1970 United States Census population figures, and was fully argued by counsel.

Upon consideration of all of which it is ORDERED that the motion for a stay pending appeal and the petition for rehearing by Virginia Beach, are DENIED.

/s/ JOHN A. MACKENZIE
United States District Judge

Norfolk, Virginia
July 13, 1971

CHAPTER 116—ACTS OF ASSEMBLY

An Act to amend the Code of Virginia by adding a section numbered 24.1-12.1, and to repeal § 24.1-12 of the Code of Virginia, the new and repealed sections relating to apportionment of members of the House of Delegates.

[H 63]

Approved Mar. 1, 1971

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 24.1-12.1 as follows:

§ 24.1-12.1. Apportionment of members of House of Delegates.—Members of the House of Delegates shall be distributed and apportioned, and each county, city and com-

bination is entitled to representation in the House of Delegates by a delegate, or by delegates, as follows:

First.—Dickenson, Lee, Wise, Scott and Norton, two.

Second.—Bristol, Smyth and Washington, two.

Third.—Russell, Tazewell and Buchanan, two.

Fourth.—Wythe, Grayson, Bland and Galax, one.

Fifth.—Craig, Giles and Pulaski, one.

Sixth.—Carroll, Floyd, Montgomery and Radford, two.

Seventh.—Roanoke City, two.

Eighth.—Roanoke County and Salem, two.

Ninth.—Franklin County, Rockbridge, Bedford County and Bedford City, and the cities of Lexington and Buena Vista, two.

Tenth.—Alleghany, Botetourt, Clifton Forge and Covington, one.

Eleventh.—Lynchburg, Amherst and Nelson, two.

Twelfth.—Campbell, one.

Thirteenth.—Patrick, Henry, Pittsylvania and Martinsville, three.

Fourteenth.—Danville, one.

Fifteenth.—Augusta, Highland, Staunton, Waynesboro and Bath, two.

Sixteenth.—Rockingham, Page, Shenandoah and Harrisonburg, two.

Seventeenth.—Frederick, Clarke, Fauquier, Warren and Winchester, two.

Eighteenth.—That portion of Fairfax County which lies in the Tenth Congressional District as described in §24.1-4.1 Fairfax City and Falls Church, five.

Nineteenth.—That portion of Fairfax County which lies in the Eighth Congressional District as described in § 24.1-4.1, five.

Twentieth.—Loudoun and Prince William, three.

Twenty-first.—Alexandria, two.

Twenty-second.—Arlington, three.

Twenty-third.—Alexandria and Arlington, one.

Twenty-fourth.—Hanover, Caroline, Stafford and Fredericksburg, two.

Twenty-fifth.—Culpeper, Rappahannock, Madison and Orange, one.

Twenty-sixth.—Albemarle, Greene, Fluvanna and Charlottesville, two.

Twenty-seventh.—Appomattox, Buckingham, Cumberland, Amelia and Prince Edward, one.

Twenty-eighth.—Charlotte, Halifax and South Boston, one.

Twenty-ninth.—Mecklenburg and Brunswick, one.

Thirtieth.—Petersburg, including those portions of Prince George and Dinwiddie Counties as described in the court's opinion in the annexation suit of Petersburg against the counties of Prince George and Dinwiddie, one.

Thirty-first.—Dinwiddie, excluding those portions encompassed within the thirtieth district, Lunenburg and Nottoway, one.

Thirty-second.—Louisa, Spottsylvania, Goochland and Powhatan, one.

Thirty-third.—Richmond City, five.

Thirty-fourth.—Henrico, three.

Thirty-fifth.—Henrico and Richmond City, one.

Thirty-sixth.—Chesterfield and Colonial Heights, two.

Thirty-seventh.—Prince George, excluding those portions encompassed within the thirtieth district, and Hopewell, one.

Thirty-eighth.—Chesapeake, two.

Thirty-ninth.—Norfolk, seven.

Fortieth.—Virginia Beach, three.

Forty-first.—Portsmouth, two.

Forty-second.—Virginia Beach, Chesapeake and Portsmouth, one.

Forty-third.—Nansemond and Suffolk, one.

Forty-fourth.—Southampton, Franklin City and Isle of Wight, one.

Forty-fifth.—Greensville, Emporia, Sussex, Surry, Charles City and New Kent, one.

Forty-sixth.—Accomack and Northampton, one.

Forty-seventh.—King George, Westmoreland, Northumberland, Richmond County and Lancaster, one.

Forty-eighth.—Essex, King and Queen, Middlesex, Gloucester, Mathews, and King William, one.

Forty-ninth.—Newport News, three.

Fiftieth.—Hampton, two.

Fifty-first.—James City, Williamsburg and York, one.

Fifty-second.—Hampton, James City, Williamsburg and York, one.

Reference to a county or city herein shall, unless otherwise specifically provided, be construed to mean the territory comprising such county or city as it exists on the effective date of this enactment notwithstanding future boundary changes by annexation, merger, consolidation or the voiding of boundary changes heretofore made final.

And the districts hereby created are hereby numbered one (1) to fifty-two (52), inclusive.

2. That § 24.1-12 of the Code of Virginia is hereby repealed.

CHAPTER 246—ACTS OF ASSEMBLY

An Act to amend and reenact § 24.1-14.1 of the Code of Virginia, relating to State senatorial districts.

[S 125]

Approved June 14, 1971

Be it enacted by the General Assembly of Virginia:

1. That § 24.1-14.1 of the Code of Virginia be amended and reenacted as follows:

§ 24.1-14.1. The Commonwealth is hereby divided into forty districts, each entitled to one senator, as follows:

First.—The city of Hampton.

Second.—The city of Newport News, less the territorial area of such city designated as Denbigh Precinct, Richneck Precinct and Reservoir Precinct, and less that corridor of land which divides Reservoir Precinct and provides ingress and egress to the Fort Eustis Military Reservation.

Third.—The counties of Accomack, James City, Northampton and York; the city of Williamsburg; and those parts of the city of Newport News designated the Denbigh Precinct, Richneck Precinct and Reservoir Precinct and that corridor of land which divides Reservoir Precinct in the City of Newport News and provides ingress and egress to Fort Eustis Military Reservation.

Fourth.—The counties of Charles City, Gloucester, Goochland, Hanover, King and Queen, King William, Louisa, Mathews, Middlesex and New Kent.

Fifth.—That portion of the city of Norfolk lying west of a line beginning at a point on the shore of the Chesapeake Bay due north of the point where the west fork of Granby Street intersects Ocean View Avenue, thence in a

southerly direction to such intersection, and along Granby Street to its point of intersection with Afton Avenue, thence in an easterly direction along Afton Avenue and an extension of such avenue to a point of intersection with the North Branch of the Lafayette River, thence in a southerly direction along the North Branch and the Lafayette River to its point of intersection with Granby Street, thence in a southerly direction along Granby Street to its point of intersection with Church Street, thence in a southerly direction along Church Street to its point of intersection with the Norfolk and Western Railway right of way, thence in a westerly direction along such right of way to its point of intersection with Colonial Avenue, thence in a southerly direction along Colonial Avenue to its point of intersection with Olney Road, thence in an easterly direction along Olney Road to its point of intersection with Duke Street, thence in a southerly direction along Duke Street to its point of intersection with Grace Street, thence in a westerly direction along Grace Street to The Hague inlet of the Elizabeth River, thence in a southerly direction to the Elizabeth River, and the boundary of the city of Chesapeake.

Sixth.—That portion of the city of Norfolk lying east of the Fifth Senatorial District and west of a line beginning at the point where the eastern boundary of the Community Park lying north of the Ocean View Golf Course meets the Chesapeake Bay, thence south on such eastern boundary to its point of intersection with Ocean View Avenue, thence in a southeasterly direction along Ocean View Avenue to its point of intersection with Chesapeake Boulevard, thence in a southerly direction along Chesapeake Boulevard to its point of intersection with Little Creek Road, thence in a westerly direction along Little Creek Road to its point of intersection with Sewells Point

Road, thence in a southeasterly and southerly direction along Sewells Point Road to its point of intersection with Princess Anne Road, thence in a southerly direction along Sewells Point Road to the upper finger of Broad Creek adjacent to Pine Ridge Road, thence in a southeasterly and southerly direction along Broad Creek to its point of intersection with the eastern branch of the Elizabeth River at the point where the boundaries of Chesapeake, Virginia Beach and Norfolk meet.

Seventh.—That portion of the city of Norfolk lying east of the Fifth and Sixth Senatorial Districts; and that portion of the city of Virginia Beach lying south and west of a line commencing at the point where the boundary with the city of Norfolk intersects Shore Drive, thence in a southeasterly direction along Shore Drive to its point of intersection with the western boundary of the Hampton Roads Sanitation property, North of Lake Smith, thence in a southerly direction along the center line of Lake Smith, across North Hampton Boulevard, and along the center line of the southeastern tributary of Lake Smith, and due south along the center line of such tributary to the northern-most point of the western property line of Bayside High School, thence in a southerly direction along such property line to its point of intersection with Haygood Road, thence in a northeasterly direction along Haygood Road to its point of intersection with Independence Boulevard, thence in a southerly direction along Independence Boulevard to its point of intersection with Witchduck Road, thence in a southwesterly direction along Witchduck Road to its point of intersection with the Virginia Beach-Norfolk Expressway, thence in an easterly direction along the Virginia Beach-Norfolk Expressway to its point of intersection with Independence Boulevard, thence in a

southerly direction along Independence Boulevard to its point of intersection with Holland Road, thence in a northwesterly direction along Holland Road to its point of intersection with Baxter Road, thence in a southwesterly direction along Baxter Road to its point of intersection with the dismantled Norfolk and Southern Railway right-of-way, thence in a southeasterly direction along such right-of-way to its point of intersection with the Kempsville and Princess Anne Borough line, thence in a southwesterly direction along such borough line to its point of intersection with the boundary with the city of Chesapeake, thence along such boundary in a northwesterly direction to its intersection with the boundary of the city of Norfolk.

Eighth.—That portion of the city of Virginia Beach not included in the Seventh Senatorial District, less that portion designated as the boroughs of Blackwater, Pungo and Princess Anne, except that the Eighth Senatorial District shall include all of the Oceana Naval Air Station.

Ninth.—That portion of the city of Richmond lying east and south of a line beginning at the point where the northern boundary with Henrico County intersects Chamberlayne Avenue, thence in a southerly direction along Chamberlayne Avenue to its point of intersection with Belvidere Street; thence in a southerly direction along Belvidere Street, across the Lee Bridge, and along Cowardin Avenue to its point of intersection with Hull Street, thence in a southwesterly direction along Hull Street to its intersection with Belt Boulevard, thence in a southeasterly direction along Belt Boulevard to its intersection with Broad Rock Road, thence in a southerly direction along Broad Rock Road to its intersection with Warwick Road; thence in an easterly direction along Warwick Road to its intersection with Hopkins Road, thence in a southerly direction along

Hopkins Road to its point of intersection with Grindall Creek, thence in an easterly direction along Grindall Creek to its point of intersection with the eastern right-of-way line of the Seaboard Coast Line Railroad, which right-of-way line was the 1942 Chesterfield boundary, thence in a southerly direction along such railroad right-of-way line to its point of intersection with the 1970 Chesterfield County boundary.

Tenth.—That portion of the city of Richmond lying west and north of the Ninth Senatorial District, less a portion of the city of Richmond lying south of a line beginning at the point where the eastern right-of-way line of the Seaboard Coast Line Railroad, which right-of-way line was the 1942 Chesterfield boundary, intersects Hull Street, thence in a northwesterly direction along such right-of-way line to its point of intersection with Midlothian Turnpike, thence in a westerly direction along Midlothian Turnpike to its point of intersection with the 1970 Chesterfield County boundary.

Eleventh.—That portion of the county of Chesterfield designated as Matoaca, Bermuda and Dale Magisterial Districts, and that part of the Clover Hill Magisterial District lying north and east of a line beginning at the point where State Route 653 intersects the Dale Magisterial District boundary, thence in a northerly direction along State Route 653 to its point of intersection with State Route 647, thence in an easterly direction along State Route 647 to its point of intersection with State Route 672, thence in a northerly direction along State Route 672 to its point of intersection with Midlothian Magisterial District; that portion of the county of Henrico lying south and east of a line beginning at the point where United States Route 360 intersects the boundary with the city of Richmond, thence

in a northerly direction along United States Route 360 to its point of intersection with Harvie Road, thence in an easterly direction along Harvie Road to its point of intersection with Laburnum Avenue, thence in a southeasterly direction along Laburnum Avenue to its point of intersection with Creighton Road, thence in the northeasterly direction along Creighton Road to the center line of the Chickahominy River, such center line being the boundary with Hanover County; and that portion of the city of Richmond not included in the Ninth and Tenth Senatorial Districts.

Twelfth.—That portion of Henrico County not included in the Eleventh Senatorial District.

Thirteenth.—The city of Portsmouth.

Fourteenth.—That portion of the county of Nansemond designated as the Sleepy Hole Magisterial District and that portion of the Cypress Magisterial District lying north of the Seaboard Coast Line Railroad; the city of Chesapeake; and that portion of the city of Virginia Beach designated as the boroughs of Blackwater, Pungo and Princess Anne, less that portion of the Oceana Naval Air Station which lies in the Borough of Princess Anne.

Fifteenth.—The counties of Dinwiddie, Greensville, Isle of Wight and Southampton; that portion of the county of Nansemond not included in the Fourteenth Senatorial District; and the cities of Emporia, Franklin and Suffolk.

Sixteenth.—The counties of Prince George, Surry and Sussex and the cities of Colonial Heights, Hopewell and Petersburg.

Seventeenth.—The counties of Amelia, Brunswick, Cumberland, Lunenburg, Mecklenburg, Nottoway and Powhatan, and that portion of the county of Chesterfield designated the Midlothian Magisterial District and that portion

of the Clover Hill Magisterial District not included in the Eleventh Senatorial District.

Eighteenth.—The counties of Appomattox, Buckingham, Charlotte, Halifax and Prince Edward; that portion of Campbell County designated as the Patrick Henry Magisterial District, the Long Mountain Magisterial District, the Central Magisterial District and that part of the Timberlake Magisterial District lying north of State Route 622; and the city of South Boston.

Nineteenth.—The county of Pittsylvania; that portion of the county of Campbell not included in the Eighteenth Senatorial District; and the city of Danville.

Twentieth.—The counties of Franklin, Henry and Patrick and the city of Martinsville.

Twenty-first.—That part of Roanoke County lying east of a line beginning at the point where the Norfolk and Western Railway intersects the Botetourt County boundary, thence in a southerly direction along such railway to its point of intersection with the eastern boundary of the city of Roanoke, thence in a southerly direction along such boundary to its point of intersection with United States Route 221, thence in a southerly direction along United States Route 221 to its point of intersection with former State Route 419, thence in an easterly direction along former State Route 419 to its point of intersection with State Route 613 (sometimes called the Starkey Road), thence in a southerly direction to the boundary of Franklin County; and the city of Roanoke.

Twenty-second.—The counties of Alleghany, Bath and Botetourt; that part of the county of Roanoke not included in the Twenty-first Senatorial District; and the cities of Salem, Clifton Forge and Covington.

Twenty-third.—The counties of Amherst and Bedford and the cities of Bedford and Lynchburg.

Twenty-fourth.—The counties of Augusta, Highland and Rockbridge and the cities of Buena Vista, Lexington, Staunton and Waynesboro.

Twenty-fifth.—The counties of Albemarle, Fluvanna, Greene, Nelson and Orange and the city of Charlottesville.

Twenty-sixth.—The counties of Culpeper, Madison, Page, Rappahannock and Rockingham and the city of Harrisonburg.

Twenty-seventh.—The counties of Clarke, Fauquier, Frederick, Warren and Shenandoah and the city of Winchester.

Twenty-eighth.—The counties of Caroline, Essex, King George, Lancaster, Northumberland, Richmond, Spotsylvania, Stafford and Westmoreland and the city of Fredericksburg.

Twenty-ninth.—The county of Prince William.

Thirtieth.—The city of Alexandria.

Thirty-first.—That portion of Arlington County south of a line beginning at the point where Wilson Boulevard intersects the Fairfax County boundary, thence in an easterly direction along Wilson Boulevard to its point of intersection with Jefferson Street, thence in a southerly direction along Jefferson Street to its point of intersection with Fifth Street north, thence in an easterly direction along Fifth Street north to its point of intersection with Frederick Street, thence in a southeasterly direction along Frederick Street to its point of intersection with Carlin Springs Road, thence in a northeasterly direction along Carlin Springs Road to its point of intersection with Glebe Road, thence in a northerly direction along Glebe Road to its point of intersection with the proposed Interstate 66 right-of-way, thence in a northeasterly direction along such right-of-way line to its point of intersection with an exten-

sion of Lorcom Lane, thence in a southeasterly direction along such extension of Lorcom Lane to its point of intersection with Cleveland Street, thence in a southerly direction along Cleveland Street to its point of intersection with Custis Road, thence in a southeasterly direction along Custis Road to its point of intersection with Wilson Boulevard, thence in a northeasterly direction along Wilson Boulevard to its point of intersection with Quinn Street, thence in a northerly direction along Quinn Street to its point of intersection with Eighteenth Street north, thence in an easterly direction along Eighteenth Street north to its point of intersection with the line of Pierce Street as extended, thence in a southerly direction along such extension of Pierce Street to its point of intersection with Wilson Boulevard, thence in an easterly direction along Wilson Boulevard to its point of intersection with Lynn Street, thence in a southerly direction along Lynn Street to its point of intersection with Arlington Boulevard, thence in an easterly direction along Arlington Boulevard to its point of intersection with the west bank of the Potomac River.

Thirty-second.—That portion of Fairfax County bounded on the west by Interstate Route 495 and on the south by the former right-of-way of the Washington and Old Dominion Railroad; that part of Arlington County not included in the Thirty-first Senatorial District; and the city of Falls Church.

Thirty-third.—Loudoun County and that portion of Fairfax County west of a line beginning at the point where Interstate Route 495 intersects the west bank of the Potomac River, thence in a southwesterly direction along Interstate Route 495 to its point of intersection with Interstate Route 66, thence in a southwesterly direction along Interstate Route 66 to its point of intersection with the

western boundary of the city of Fairfax, thence in a southwesterly direction along such boundary to its point of intersection with United States Routes 29 and 211, thence in a southwesterly direction along United States Routes 29 and 211 to its point of intersection with Shirley Gate Road, thence in a southwesterly direction along Shirley Gate Road to its point of intersection with Braddock Road, thence in a southeasterly direction along Braddock Road to its point of intersection with Ox Road, thence in a southerly direction along Ox Road to its point of intersection with Chapel Road, thence in a westerly direction along Chapel Road to its point of intersection with Yates Ford Road, thence in a southwesterly direction along Yates Ford Road to its point of intersection with Wolf Run, thence in a southeasterly direction and with the meanders of Wolf Run to its intersection with the Prince William boundary at Occoquan Creek.

Thirty-fourth.—That portion of the county of Fairfax within a line beginning at a point where the western boundary of Fairfax City intersects with the southern right-of-way line of United States Routes 29 and 211, thence in a southwesterly and southeasterly direction along the boundary of the Thirty-third Senatorial District to its point of intersection with Ox Road, thence in a southeasterly direction along Braddock Road to its point of intersection with Burke Station Road, thence in a northerly direction along Burke Station Road to its point of intersection with Laurel Street, thence in an easterly direction along Laurel Street to its point of intersection with Whiteacre Road, thence in a southerly direction along Whiteacre Road to its point of intersection with the southern Fairfax County School Board property line, thence in an easterly direction along such line, and continuing such line to a point of intersection with Olley Lane, thence in a northerly direction

along Olley Lane to its point of intersection with State Route 236, thence in a southeasterly direction along State Route 236 to its point of intersection with Hummer Road, thence in a northeasterly direction along Hummer Road to its point of intersection with Gallows Road and Annandale Road, thence in a northerly direction along Annandale Road to its point of intersection with Holmes Run, thence with the meanders of Holmes Run downstream to Sleepy Hollow Road, thence in a southerly direction along Sleepy Hollow Road to its point of intersection with Columbia Pike, thence in an easterly direction along Columbia Pike to its point of intersection with Old Columbia Pike, thence in a southerly direction along Old Columbia Pike to its point of intersection with State Route 236, thence in an easterly direction along State Route 236 to its point of intersection with the western boundary of the city of Alexandria, thence in a northerly direction along such boundary to the southwestern boundary of Arlington County, thence in a northwesterly direction along such boundary to the southern boundary of the city of Falls Church, thence in a westerly and northerly direction along such boundary to its point of intersection with a former right-of-way of the Washington and Old Dominion Railroad, thence in a southwesterly direction along said former railroad right-of-way to its point of intersection with Interstate Route 495, thence along the boundary of the Thirty-third Senatorial District to point of beginning; and the city of Fairfax.

Thirty-fifth.—That portion of Fairfax County within a line beginning at the Prince William boundary at Occoquan Creek and Wolf Run, thence in a northerly direction with the eastern boundary of the Thirty-third Senatorial District to the southern boundary of the Thirty-fourth Senatorial District, thence in an easterly direction along such boundary

to the western boundary of the city of Alexandria, thence in a southeasterly direction along such boundary to its point of intersection with Van Dorn Street, thence in a southerly direction along Van Dorn Street to the tracks of the Richmond, Fredericksburg and Potomac Railroad, thence in a southeasterly direction along such tracks to Newington Road, thence in a westerly direction along Newington Road to its point of intersection with Backlick Road, thence in a northerly direction along Backlick Road to its point of intersection with Interstate Route 95, thence in a southerly direction along Interstate Route 95 to its point of intersection with Pohick Creek, thence in a southeasterly direction along Pohick Creek to its point of intersection with Old Colchester Road, thence in a southwesterly direction along Old Colchester Road to its point of intersection with the Prince William boundary at Occoquan Creek, thence with such boundary in a northwesterly direction to Wolf Run and the point of beginning.

Thirty-sixth.—That portion of the county of Fairfax lying east of the Thirty-fifth Senatorial District.

Thirty-seventh.—The counties of Carroll, Floyd, Grayson and Montgomery and the cities of Galax and Radford.

Thirty-eighth.—The counties of Bland, Craig, Giles, Pulaski, Tazewell and Wythe.

Thirty-ninth.—The counties of Scott, Smyth and Washington; that portion of the county of Russell designated the Lebanon Magisterial District, and that portion of the Castlewood Magisterial District lying south and west of a line beginning at the point where State Route 65 intersects the Scott County boundary, thence in an easterly direction along State Route 65 to its point of intersection with State Route 683, thence in an easterly direction along State Route 683 to its point of intersection with State Route 615, thence

in a northerly direction along State Route 615 to its point of intersection with State Route 640, thence in an easterly and southerly direction along State Route 640, to its point of intersection with State Route 645, thence in a southerly direction along State Route 645 to its point of intersection with the boundary of Lebanon Magisterial District; and the city of Bristol.

Fortieth.—The counties of Buchanan, Dickenson, Lee and Wise; that portion of the county of Russell not included in the Thirty-ninth Senatorial District; and the city of Norton.

All references to districts, boundaries, streets and highways shall be interpreted to refer to those in existence on March one, nineteen hundred seventy-one.

ORDER ON FIRST HEARING

Upon consideration of the record and arguments of counsel, on brief and orally, the Court finds, and is of opinion and orders in each of the suits hereinbefore styled, as follows:

(1) Virginia is one of the States which has been subjected to the Voting Rights Act of 1965, 42 USC 1973b; that the revised constitution of Virginia, Article III, Section 6, requires the General Assembly to reapportion the State into electoral districts in the year 1971 and every ten years thereafter; that the 1971 legislative reapportionment statutes of Virginia, Acts of Assembly, 1971, chapters 116 and 120, are analogous to legislation held to constitute a device proscribed by Section 5 of the Voting Rights Act, supra, Perkins v. Matthews, 400 U.S. 379, 395 (1971); Allen v. State Board of Elections, 393 U.S. 544, 566, 568 (1969); that the Voting Rights Act, Section 5, supra,

therefore forbids the enforcement of Virginia's 1971 reapportionment legislation unless it is declared unobjectionable by the United States District Court for the District of Columbia or has not been objected to by the Attorney General of the United States; that the latter has in due time objected to the legislation; and that the Voting Rights Act confers no jurisdiction on this Court to approve or disapprove the ruling of the Attorney General, or to rule upon the effectiveness of the reapportionment legislation under the Voting Rights Act.

(2) On these findings the Court concludes that at this time the Court has no justiciable issue before it in regard to the validity of the reapportionment legislation in respect to Section 5 of the Voting Rights Act of 1965.

(3) The Court further finds that it would be impracticable to pass upon the validity of the reapportionment legislation with respect to the objections pressed in these suits, aside from the pertinence of the Voting Rights Act, until such reapportionment legislation is adopted by Virginia as is not in violation of Section 5 of the Voting Rights Act, as determined by the Attorney General of the United States or the United States District Court for the District of Columbia, inasmuch as the non-existence or removal alone of any valid objections asserted by the plaintiffs might not result in reapportionment legislation compatible with the provisions of the Voting Rights Act as applied by the Attorney General of the United States or the United States District Court for the District of Columbia.

(4) On these further findings, the Court further concludes that it should not at his time hear and decide only those issues made by these suits.

It is therefore ORDERED as follows:

(a) That the trial of these suits be continued to allow Virginia to procure the approval of the Attorney General of the United States or the United States District Court for the District of Columbia of the 1971 or other submitted reapportionment legislation;

(b) That the primary election now set by the laws of the State of Virginia for June 8 be postponed until September 14, 1971.

(c) That unless on or before June 15, 1971, Virginia has adopted and submitted reapportionment legislation either to the Attorney General of the United States or to the District Court for the District of Columbia for declaratory judgment as provided for in Section 5 of the Voting Rights Act, this Court shall proceed with the trial of these suits and thereafter formulate a plan of reapportionment within the prescription of the Voting Rights Act and resolving the valid objections, if any, of the plaintiffs to the 1971 reapportionment legislation; and

(d) That jurisdiction of these suits be retained by the Court until further order.

/s/ ALBERT V. BRYAN
United States Circuit Judge

/s/ OREN R. LEWIS
United States District Judge

/s/ JOHN A. MACKENZIE
United States District Judge

/s/ ROBERT R. MERHIGE, JR.
United States District Judge

Judges Bryan and Merhige sign this order as to each of the cases; Judge MacKenzie as to Civil Action No. 105-71-N and Civil Action No. 174-71-R; Judge Lewis as to Civil Action No. 111-71-A.

/s/ ALBERT V. BRYAN
United States Circuit Judge

/s/ OREN R. LEWIS
United States District Judge

/s/ JOHN A. MACKENZIE
United States District Judge

/s/ ROBERT R. MERHIGE, JR.
United States District Judge

May 24, 1971.

IN THE

UNITER STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division

Civil Action No. 105-71-N

Henry E. Howell, Jr., et al

v.

Joan S. Mahan, et al

Alexandria Division

Civil Action No. 111-71-A

Stanford E. Parris, et al

v.

Edgar A. Prichard, et al

Richmond Division

Civil Action No. 174-71-R

Clive L. DuVal, II, et al

v.

Edgar A. Prichard, et al

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed July 15, 1971)

Notice is hereby given that the intervenor defendant City of Virginia Beach hereby appeals to the Supreme Court of

the United States from the Interlocutory Order entered in the above styled actions on July 2, 1971, declaring invalid the reapportionment statutes of the Commonwealth of Virginia and ordering that members of the Senate and House of Delegates of Virginia be elected from electoral districts established by the Court.

This appeal is taken pursuant to 28 U.S.C. § 1253.

/s/ JOHN B. ASHTON
Special Counsel for the City of
Virginia Beach

J. DALE BIMSON
City Attorney
City of Virginia Beach
Municipal Center
Virginia Beach, Virginia 23456

HARRY FRAZIER, III
JOHN B. ASHTON
Hunton, Williams, Gay,
Powell & Gibson
700 East Main Street
Richmond, Virginia 23219
Special Counsel for the City
of Virginia Beach

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action No. 174-71-R

Clive L. DuVal, 2d, et al.,

Plaintiffs

v.

Edgar A. Prichard, et al.,

Defendants

Civil Action No. 111-71-A

Stanford E. Parris, et al.,

Plaintiffs

v.

Edgar A. Prichard, et al.,

Defendants

Civil Action No. 105-71-N

Henry E. Howell, Jr., et al.,

Plaintiffs

v.

Joan S. Mahan, et al.,

Defendants

NOTICE OF APPEAL

Notice is hereby given that defendants Joan S. Mahan, U. P. Joyner, Jr. and Edgar A. Prichard, Members, Virginia State Board of Elections [defendants Linwood Hol-

ton, Governor of Virginia, and Andrew P. Miller, Attorney General of Virginia, having been deleted as party defendants], hereby appeal to the Supreme Court of the United States from the Interlocutory Order of this Court entered in the above styled actions on July 2, 1971, declaring invalid the reapportionment statutes of the Commonwealth of Virginia, redistricting the General Assembly of Virginia, as enacted by Chapters 116 and 120 of the 1971 Acts of Assembly, and ordering that elections be conducted pursuant to the legislative districts established and specified by the Court.

This appeal is taken pursuant to 28 U.S.C. § 1253.

JOAN S. MAHAN
U. P. JOYNER, JR.
EDGAR A. PRICHARD

By: /s/ ANTHONY F. TROY
Counsel

ANDREW P. MILLER
Attorney General of Virginia

ANTHONY F. TROY
VANN H. LEFCOE
Assistant Attorneys General

Supreme Court–Library Building
Richmond, Virginia 23219

LETTER FROM DAVID L. NORMAN TO HONORABLE LINWOOD HOLTON

May 7, 1971

Honorable Linwood Holton
Governor of Virginia
Richmond, Virginia

Dear Governor Holton:

This letter is in reference to the enactments amending sections 24.1-41, 24.1-14, and 24.1-12 of the Virginia Code reapportioning districts for the Virginia Senate and House of Delegates and for the United States Congress. Those reapportionment enactments were submitted to the Attorney General pursuant to section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, as construed by the Supreme Court, *Fairley* v. *Patterson,* 393 U.S. 544, 569 (1969); *Perkins* v. *Mathews,* 400 U.S. 379, 394 (1971).

Your submission was initially received on March 1, 1971, and additional material necessary to evaluate the submission was received on March 19 and 22. As we indicated in our letter of March 16, the Attorney General has sixty days within which to interpose an objection to a change affecting voting, commencing with the date on which he receives information sufficient to evaluate the submission.

We have given careful consideration to the submitted change and the supporting information as well as information received from private citizens. The Attorney General does not interpose an objection to the reapportionment of United States congressional districts and does not object to the redistricting of the Virginia Senate and House of Delegates except as follows:

(1) House Multi-Member Districts in Hampton, Newport News, Norfolk, Portsmouth, and Richmond.

A three-judge federal district court has held that where there are cognizable racial neighborhoods whose residents have an identity of interests (as is the case in most of our large cities), the technique of multi-member districts cannot be used if it tends to minimize the voting strength of racial minorities, *Chavis* v. *Whitcomb*, 305 F. Supp. 1364 (S.D. Ind. 1969). That case is on direct appeal to the Supreme Court and is now awaiting decision on the merits. 39 U.S.L.W. 3257. As long as that decision remains outstanding and unmodified, the Attorney General cannot approve the multi-member districts for Hampton, Newport News, Norfolk, Portsmouth, and Richmond, each of which has concentrations of racial minorities. You may wish to consider whatever decision is reached by the Supreme Court in the *Chavis* appeal in determining what alternatives remain available.

(2) Virginia Senate Districts 5 and 6 (Norfolk)

The holding of the Supreme Court in *Gamillion* v. *Lightfoot*, 364 U.S. 339 (1968), suggests that the voting rights of a racial minority can be infringed by drawing odd-shaped voting districts in which, in view of the available alternatives, the voting strength of that group is adversely affected. The division of Senate districts 5 and 6, which divides concentrations of Negro voters, appears contorted and does not conform to natural boundaries. It would appear that the district lines could be drawn more naturally to avoid the effect of adversely affecting the Negro voting strength.

I should like to add that the Voting Rights Act of 1965 permits seeking approval of all changes affecting voting by

the United States District Court for the District of Columbia irrespective of whether the change has previously been submitted to the Attorney General.

Sincerely,

DAVID L. NORMAN
Acting Assistant Attorney General
Civil Rights Division

COMMUNICATION FROM JOHN M. MITCHELL

June 10, 1971

Federal Government Teletype Service
From: Washington, D. C.

In accordance with your request, we have reconsidered our objection to the multimember aspects of the plan of reapportionment of the Virginia House of Delegates. Inasmuch as our objection was based on the decision of the United States District Court in Whitcomb v. Chavis and that decision was reversed on June 7, 1971 by the Supreme Court, our objection to the House multimember districting is hereby withdrawn. Please be advised that Section 5 of the Voting Rights Act provides that our failure to object does not bar a subsequent legal action if such is needed.

Signed,

JOHN M. MITCHELL
Attorney General of the United States

LETTER FROM DAVID L. NORMAN TO HONORABLE LINWOOD HOLTON

August 13, 1971

Honorable Linwood Holton
Governor of Virginia
Richmond, Virginia 23219

Dear Governor Holton:

This is in reference to Senate Bill 125 proposing changes to Senate Districts 5, 6 and 34 for the Commonwealth of Virginia which you submitted to the Attorney General on June 14, 1971, pursuant to Section 5 of the Voting Rights Act of 1965.

I understand that on July 2, 1971, after the referenced legislation was submitted to the Attorney General, the United States District Court for the Eastern District of Virginia further altered the Virginia reapportionment plan and, among other things, decreed that the area encompassed by proposed Senate districts 5 and 6 in the referenced legislation should hold its elections for state senator on an at-large basis. I further understand that the ruling of the Court is now in appeal.

Since the Court ordered plan has not finally been decided in the courts and since the 60 day period for the Attorney General's consideration of your submission of the proposed district expires today, I believe it would be appropriate to advise you that the Attorney General interposes no objection to the changes embodied in the legislation submitted. Therefore, should the litigation of this matter result in a reinstatement of the districts described in

Senate Bill 125, no further submission to the Attorney General will be necessary.

Sincerely,

DAVID L. NORMAN
Acting Assistant Attorney General
Civil Rights Division

THE POPULATION OF THE SENATORIAL DISTRICTS

	District	*Population*	*Percentage*
1	Hampton	120,779	+3.9
2	Newport News (part)	121,200	+4.3
3	Newport News (part) York James City Williamsburg Accomack Northampton		
	Total	120,548	+3.7
4	Charles City New Kent Gloucester Mathews Middlesex King & Queen King William Hanover Goochland Louisa		
	Total	113,520	—0.2
5	Norfolk (part)	116,084	—0.1
6	Norfolk (part)	116,103	—0.002
7	Norfolk (part) Virginia Beach (part)		
	Total	115,959	—0.2
8	Virginia Beach (part)	116,528	+0.2
9	Richmond (part)	115,400	—0.7

	District	*Population*	*Percentage*
10	Richmond (part)	115,950	—0.2
11	Henrico (part)	114,638	—1.4
12	Chesterfield(part) Henrico (part) Richmond (part) Total	114,846	—1.175
13	Portsmouth	110,963	—4.517
14	Virginia Beach (part) Nansemond (part) Chesapeake Total	111,840	—3.56
15	Nansemond (part) Suffolk Isle of Wight Southampton Greensville Dinwiddie Franklin Emporia Total	121,844	+4.645
16	Sussex Surry Prince George Hopewell Petersburg Colonial Heights Total	121,109	+4.214

	District	*Population*	*Percentage*
17	Brunswick Mecklenburg Lunenburg Nottoway Amelia Cumberland Powhatan Chesterfield (part)		
	Total	113,018	—2.748
18	Halifax South Boston Charlotte Campbell (part) Appomattox Prince Edward Buckingham		
	Total	117,987	+1.527
19	Pittsylvania Danville Campbell (part)		
	Total	113,788	—2.085
20	Henry Martinsville Patrick Franklin		
	Total	112,694	—3.027
21	Roanoke City Roanoke County (part)		
	Total	116,572	+0.309

	District		*Population*	*Percentage*
22	Roanoke County (part)			
	Salem			
	Botetourt			
	Alleghany			
	Clifton Forge			
	Covington			
	Bath			
		Total	116,271	+0.050
23	Bedford County			
	Bedford City			
	Lynchburg			
	Amherst			
		Total	112,894	—2.855
24	Rockbridge			
	Buena Vista			
	Lexington			
	Augusta			
	Staunton			
	Waynesboro			
	Highland			
		Total	118,619	+2.071
25	Nelson			
	Albemarle			
	Charlottesville			
	Greene			
	Fluvanna			
	Orange			
		Total	115,023	—1.023

	District		Population	Percentage
26	Harrisonburg Rockingham Page Madison Culpeper Rappahannock			
		Total	111,131	—4.372
27	Frederick Winchester Shenandoah Clarke Warren Fauquier			
		Total	116,166	—0.039
28	Stafford Fredericksburg Spotsylvania King George Caroline Westmoreland Northumberland Richmond Essex Lancaster			
		Total	120,872	+4.009
29	Prince William		111,102	—4.397
30	Alexandria		110,938	—4.538
31	Arlington County (part)		115,190	—0.879

	District	*Population*	*Percentage*
32	Falls Church Fairfax County (part) Arlington County (part)		
	Total	115,051	—0.999
33	Loudoun County Fairfax County (part)		
	Total	117,043	+0.715
34	City of Fairfax Fairfax County (part)		
	Total	116,689	+0.4
35	Fairfax County (part)	117,166	+0.8
36	Fairfax County (part)	118,058	+1.6
37	Montgomery Radford Floyd Carroll Grayson Galax		
	Total	113,337	—2.5
38	Tazewell Bland Giles Pulaski Wythe Craig		
	Total	117,207	+0.9

	District		*Population*	*Percentage*
39	Scott Washington Bristol Smyth Russell (part)			
		Total	122,242	+5.18
40	Lee Wise Norton Dickenson Buchanan Russell (part)			
		Total	122,125	+5.088
TOTAL STATE POPULATION			4,648,494	
AVERAGE DISTRICT			116,212	

POPULATION STATISTICS FOR 1971 DELEGATE DISTRICTS

Location	*Population*	*% Variance/Seat From 46,485 (Optimum)*	*Seats*	*Pop/Seat*
First: Dickenson, Lee, Wise, Scott, Norton	100,722	+8.3	2	50,361
Second: Bristol, Smyth, Washington	87,041	—6.4	2	43,521
Third: Russell, Tazewell, Buchanan	96,420	+3.7	2	48,210
Fourth: Wythe, Grayson, Bland, Galax	49,279	+6.0	1	49,279
Fifth: Craig, Giles, Pulaski	49,829	+7.2	1	49,829
Sixth: Carroll, Floyd, Montgomery, Radford	91,620	—1.5	2	45,810
Seventh: Roanoke City	92,115	—0.9	2	46,058
Eighth: Roanoke Co., Salem	89,321	—3.9	2	44,661

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop/Seat
Ninth: Franklin Co. Rockbridge Bedford Co. Bedford City Lexington Buena Vista	90,256	—2.9	2	45,128
Tenth: Alleghany Botetourt Clifton Forge Covington	46,215	—0.6	1	46,215
Eleventh: Lynchburg Amherst Nelson	91,857	—1.2	2	45,929
Twelfth: Campbell	43,319	—6.8	1	43,319
Thirteenth: Patrick Henry Pittsylvania Martinsville	144,625	+3.7	3	48,208
Fourteenth: Danville	46,391	—0.2	1	46,391
Fifteenth: Augusta Highland Staunton Waynesboro Bath	93,152	+0.2	2	46,576
Sixteenth: Rockingham Page Shenandoah Harrisonburg	101,928	+9.6	2	50,964

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop/Seat
Seventeenth: Frederick Clarke Fauquier Warren Winchester	93,314	+0.4	2	46,657
Eighteenth: Fairfax City Falls Church (Part) Fairfax County	246,509	+6.1	5	49,302
Nineteenth: (Part) Fairfax County	241,254	+3.7	5	48,251
Twentieth: Loudoun Prince William	148,252	+6.3	3	49,417
Twenty-first, Twenty-second and Twenty-third (floater): Alexandria Arlington	285,222	+2.3	6	47,537
Twenty-first, proportionate share of Twenty-third (floater): Alexandria	110,938	—0.1	2.39	46,417
Twenty-second, proportionate share of Twenty-third (floater): Arlington	174,284	+3.9	3.61	48,278

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop/Seat
Twenty-fourth: Hanover Caroline Stafford Fredericksburg	90,441	—2.7	2	45,221
Twenty-fifth: Culpeper Rappahannock Madison Orange	45,847	—1.4	1	45,847
Twenty-sixth: Albemarle Greene Fluvanna Charlottesville	89,529	—3.7	2	44,765
Twenty-seventh: Appomattox Buckingham Cumberland Amelia Prince Edward	48,531	+4.4	1	48,531
Twenty-eighth: Charlotte Halifax South Boston	48,516	+4.4	1	48,516
Twenty-ninth: Mecklenburg Brunswick	45,598	—1.9	1	45,598
Thirtieth: Petersburg (Increased annex area)	45,176	—2.8	1	45,176

Location	Population	% Variance/Seat From 46,485 (Optimum)	Pop/Seat	Seats
Thirty-first: Dinwiddie Lunenburg Nottoway (Annexed loss—Dinwiddie)	47,455	+2.1	1	47,455
Thirty-second: Louisa Spottsylvania Goochland Powhatan	48,193	+3.7	1	48,193
Thirty-third: Richmond City	249,621	—3.4	5	44,887
Thirty-third plus proportionate share of Thirty-fifth (floater): Richmond	249,621	—4.4	5.62	44,417
Thirty-fourth: Henrico	154,364	—3.4	3	44,887
Thirty-fourth plus proportionate share of Thirty-fifth (floater): Henrico	154,364	—1.8	3.38	45,670
Thirty-fifth: Richmond City and Henrico (floater)		—3.4	1	44,887
Thirty-sixth: Chesterfield Colonial Heights	91,952	—1.1	2	45,976

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop/Seat
Thirty-seventh: Prince George Hopewell Annexed loss— Prince George	47,028	+1.2	1	47,028
Thirty-eighth, Fortieth, Forty-first, Forty-second (floater): Chesapeake Virginia Beach Portsmouth	372,649	+0.2	8	46,581
Thirty-eighth, proportionate share of the Forty-second (floater): Chesapeake	89,580	—14.0	2.24	39,991
Fortieth, proportionate share of the Forty-second (floater): Virginia Beach	172,106	+7.0	3.46	49,742
Forty-first, proportionate share of the Forty-second (floater): Portsmouth	110,963	+3.8	2.3	48,245
Thirty-ninth: Norfolk	307,951	—5.4	7	43,993
Forty-third: Nansemond Suffolk	45,024	—3.2	1	45,024
Forty-fourth: Southampton Franklin City Isle of Wight	43,747	—5.9	1	43,747

Location	Population	% Variance/Seat From 46,485 (Optimum)	Seats	Pop/Seat
Forty-fifth: Greensville Emporia Sussex Surry Charles City New Kent	43,708	—6.0	1	43,708
Forty-sixth: Accomack Northampton	43,446	—6.5	1	43,446
Forty-seventh: King George Westmoreland Northumberland Richmond Co. Lancaster	44,387	—4.5	1	44,387
Forty-eighth: Essex King & Queen Middlesex Gloucester Mathews King William	47,609	+2.4	1	47,609
Forty-ninth: Newport News	138,177	—0.9	3	46,059
Fiftieth, Fifty-first, Fifty-second (floater): Hampton James City Williamsburg York	180,904	—2.7	4	45,226